A. 9

*Hugh Cecil Earl of Lonsdale.*

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THE

# HORSEMAN'S MANUAL:

BEING A

## TREATISE ON SOUNDNESS,

THE

## *Law of Warranty,*

AND

GENERALLY ON THE LAWS RELATING TO

## HORSES.

By R. S. SURTEES,
Lincoln's Inn Fields.

London:
ALFRED MILLER, 137, OXFORD STREET.

1831.

M. A. Pittman, 18, Warwick Square.

## DEDICATION

TO

## RALPH JOHN LAMBTON, ESQ.

MERTON HOUSE, DURHAM.

MY DEAR SIR,

THE accurate knowledge you possess of all that is connected with that noble animal the Horse induces me humbly to offer to your notice the following pages on the laws relating thereto, trusting to your well-known liberality for overlooking all errors and imperfections.

That you may for many years continue to occupy the distinguished position you have so long held in the Sporting World, is the sincere wish of,

My dear Sir,

Your very faithful and obedient servant,

R. S. SURTEES.

Lincoln's Inn Fields, Nov. 1830.

L.N.1

# INTRODUCTION.

THE glorious uncertainty of the Law has long been proverbial; but to no one of its multitudinous branches is this saying more applicable than to the uncertainty of the law of warranty on the purchase and sale of horses.

Owing to the nature of their profession, the Judges have not those opportunities of acquiring information, or of ascertaining by experience the various peculiarities and qualifications of the horse, which are necessary to be known in order to arrive at a proper conclusion on points connected with them. Many of their decisions are founded more in theory than practice; and even their theory is oftentimes the *dicta* of Veterinary Surgeons and other practical men.

But their ignorance of the economy of the horse

is not the only disadvantage under which their Lordships labour when forming an opinion on what is commonly called a "horse cause." The contradictory evidence, not to say perjury, and the stabularian and technical terms which are made use of, tend much to heighten the embarrassment under which they are placed.

Far be it from me to say anything disrespectful of their Lordships. On deep and intricate questions of law no country possesses Judges more competent to decide than we are blessed with in England; and while I assert their general ignorance with respect to horses, I must also admit that it is a species of knowledge almost incompatible with the grave and laborious duties which they have to perform.

But if to the administrators of the law the subject is one of difficulty, how much more perplexing must it be to the ordinary citizen of the world, who, in addition to his own opinion, has frequently to contend with adverse doctrines promulgated by the Judges, without in many instances knowing where to find the decisions!

Important as is the law of warranty on the sale and purchase of horses to a numerous class of persons in this country, it is matter of surprise that

no attempt should have been made to collect in a small compass and practical form the various decisions on this subject which lie scattered through the whole body of law reports.

With the exception of a short anonymous treatise, intitled "The Laws relating to Horses," and which, though professing to be intended "for practical as well as professional reference," hardly notices this most important part of the subject, the author is not aware of any work which treats at all copiously of the Law of Warranty of Horses.

So contradictory are many cases, and so unsettled even at the present day is the law of warranty, that any endeavour to reconcile the conflicting opinions of the Courts would serve rather to obscure than to elucidate the subject.

The only object which the writer of this little treatise has in view is, by arranging the decisions in a systematical form, to enable the reader to draw his own conclusions as to their leaning and tendency: to assist in doing which, and also to enable him to form an opinion upon points where no legal authority is laid down, the author has had recourse to the writings and opinions of eminent Veterinary Surgeons of the past and present day.

To these gentlemen, particularly to Professor

Coleman of the Veterinary College, and Mr. Mavor of New Bond Street, the author's acknowledgments are due; as also to the members of his own profession, who have so kindly aided his endeavours, particularly to his friend Edward Loraine, Esq.

27, Lincoln's Inn Fields,
Nov. 1830.

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THE

# HORSEMAN'S MANUAL.

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## CHAP. I.

### ON SALES BY PRIVATE CONTRACT, AND THE LAW OF WARRANTY.

WARRANTY, as applicable to horse-dealing transactions, may be divided into two kinds—the one,

A GENERAL WARRANTY, extending, according to the doctrine laid down by Lord Mansfield, to all faults known and unknown to the seller:

The other,

A QUALIFIED WARRANTY, extending equally to all faults known and unknown to the seller, except certain ones specifically mentioned and excepted in the warranty.

Having premised thus much, I shall first mention the requisite to constitute a sale by private contract; and shall then proceed to shew in what

condition the law requires a horse to be with which a general warranty is given, and which is as applicable to sale by public auction as by private contract.

To constitute a binding contract or agreement for the sale of any goods, wares, or merchandises (under which terms horses are included) of the value of ten pounds or upwards, the 17th section of an Act of Parliament passed in the 29th year of the reign of King Charles the Second, chapter 3, commonly called the "Statute of Frauds"—meaning thereby the Statute *against* frauds—enacts,

"That the buyer shall accept part of the goods so sold, and absolutely receive the same, or give something as earnest to bind the bargain, or in part payment, or that some note or memorandum in writing of the bargain be made and signed by the parties to be charged with such contract."

For instance: if I agree with a man for the purchase of a horse for fifty pounds, but no delivery takes place at the time, nor is any thing given to bind the bargain, and there is no written memorandum made respecting it, the owner is at liberty to resell the horse to any person he may afterwards meet, and with whom he may be able to make better terms for himself; and I have no remedy against him for this breach of faith.

While, on the contrary, had I given him a penny, or any thing else, to bind the bargain, or reduced the terms of it into writing, on proving the payment of the earnest, or on production of the memorandum of agreement, I should be entitled to recover damages against the seller for this departure from his bargain.

This custom of giving money to bind the bargain on the sale of horses has fallen into disuse in many parts of England; but in the northern counties it is still preserved with great strictness, and in them a horse-dealer would as soon think of appearing in a fair without his whip in his hand, or a straw in his mouth, as without his pennies to "hansell," or bind his bargain.

Blackstone, in his *Commentaries on the Laws of England*, says, that

"Anciently among all the northern nations shaking of hands was held necessary to bind the bargain—a custom which we still retain in many verbal contracts. A sale thus made was called hand-sale—'*venditio per mutuam manuum complexionem*'—a sale by the mutual joining of hands:—till in process of time the same word was used to signify the price, or earnest, which was given immediately after the shaking of hands, or instead thereof."

As soon as the bargain is struck, the law considers the property of the horse, or whatever else is the subject of it, is transferred to the buyer, and that of the price to the seller; but the buyer cannot take him away until he pays, or offers, the price agreed upon.

But if he offers the money to the seller, and he refuses to deliver him, the buyer may seize the horse, or bring an action against the seller for detaining him.

And if the sale has been regularly made as prescribed by the Statute, and though there has been no delivery, yet the property in the animal is absolutely vested in the purchaser.

And if A. sells a horse to B. for thirty pounds, and B. pays him earnest, or signs a note in writing of the bargain, and afterwards, before the delivery of the horse, or money paid, the horse dies in A. the seller's custody, still A. is entitled to the money, because, by the contract, the property was in the buyer.

If, therefore, it were only to guard against this one case, it were well for the seller to make the bargain binding.

The case of *Alexander* against *Comber* shews the disadvantages accruing to a buyer by not doing the same.

The subject of the action was a flock of sheep of the value of fifty pounds, which Alexander had *verbally* agreed to buy of Comber at Lewes fair in Sussex, and to take them away at a certain hour.

It appeared that there was not any money paid, any memorandum made respecting them, or any sheep delivered; and Alexander not coming at the appointed time, or sending for them, Comber resold the sheep to another person, whereupon Alexander brought his action.

The Court held, that the terms imposed by the Act of Parliament had not been complied with by Alexander so as to vest the property in him, there having been neither earnest, delivery, nor agreement in writing; and, consequently, he could not maintain his action.

It not unfrequently happens that horses are exchanged: sometimes one is given for another without any farther consideration; but more generally there is a sum paid in addition to the horse given, by one of the exchangers, to make up the difference in value.

There is no difference between sales and exchanges; but a delivery on one or both sides is essential to establish the contract.

If the exchange be made without any pecuniary consideration, but it is agreed that one horse shall

be warranted sound, and the other shall not, this ought to be expressly stated in writing, and signed by the person warranting.

Where there is a sum of money paid in addition to the horse given, the parties may reckon the price according to their own mode, as in the case of *Hands* against *Burton,* where the action was brought on the warranty of a horse stated as having been purchased for the entire sum of thirty guineas; whereas the proof was of an agreement to purchase at that price if the defendant would take another horse at fourteen guineas, and the difference only be paid by the defendant; and it was held to be but one deal, and that the parties were at liberty to consider the horse given as the sum of fourteen guineas in their mode of reckoning.

Supposing us to have purchased a horse under a general warranty of soundness, and that the bargain is completed by delivery, we will proceed to examine what the Judges say on the subject of soundness.

But first, as they, in their decisions of questions of this nature, are not only accustomed to attach much weight to the opinions of veterinary surgeons, but have even been known on *their* evidence to over-rule former cases; and following up my position, that their practical knowledge is generally

derived from the evidence of this class of persons; I shall first state the opinion of Mr. Taplin, a veterinary surgeon of great experience, who wrote in the last century, respecting what were considered the requisites for a sound horse in his time: after which I shall give the ideas of an eminent practitioner of the present day; and then proceed to mention the different cases decided by the Judges, which constitute the law on the subject as it now stands.

Mr. Taplin, in page 14 of the first volume, 13th edition, of his book called the *Gentleman's Stable Directory*, after treating of the age of a horse, thus proceeds—

"Then should follow a most minute and attentive inspection, or rather strict examination, of those points constituting the distinctions between *imperfections, blemishes,* and *defects* in general, doubtfully implied, and not always perfectly understood by the common assurance of 'sound wind and limb'—to ascertain the veracity of which technical phraseology much nicety of discrimination appertains.

"Amongst sportsmen (who are justly entitled to the appellation of gentlemen, and possess a high and proper sense of honour, and the principle of equity) the general acceptation of the word *sound*

has *ever been,* and *still is,* intended to convey an honorable unequivocal assurance of the perfect state of both the frame and bodily health of the subject, without exception or ambiguity.

"It is meant to imply the total absence of blemishes, as well as defects (unless particularly pointed out and explained), and is really intended to confirm a *bona fide* declaration of the horse's being (at the time) free from *every imperfection*—labouring under no impediment to sight or action.—This is the established intent and meaning of the word 'sound' amongst *gentlemen* and *sportsmen:* its explication and various uses, for the convenient purposes and impositions of grooms, dealers, blacklegs, and jobbing itinerants, are too perfectly understood (by those who have run the gauntlet of experience and deception) to require farther animadversion."

Though not properly applicable to a work of this nature, I cannot omit the following piece of advice given by the same author, and immediately following the above quotation:—

"However, as you can but very seldom possess the good fortune to purchase of a *gentleman,* it will prove no contemptible practice to adopt the sage old maxim, and 'deal with an honest man as you would with a rogue.' This precaution may pre-

vent a *probable* repentance, and palpably urges the necessity of putting your own judgment and circumspection in competition with the integrity of your opponent, however he may be favored by *fortune*, or sanctioned by *situation*."

Mr. Mavor, of New Bond-street, a veterinary surgeon of great practical experience, in answer to the following question :—

" What do you consider constitutes a sound horse ?"

Says—

" I consider a horse to be sound which is perfect in structure and perfect in function.

" I also consider a horse to be sound, though with alteration in the structure, provided he has never been either lame or incapacitated (and is not likely to become lame and incapacitated) from performing the ordinary duties to which he may be subjected in consequence of such alteration, and can perform them with equal facility as if there had been no such alteration of structure."

Alteration of structure is perhaps a technical term, and, as here applied, means any alteration in the original mould in which Nature formed the horse; and which alteration may be either the work of design or produced by accident—as for

instance, the docking or arrangement of the tail to meet the fashion of the day; or the enlargement of a tendon, caused by a blow, or produced from over-exertion.

Looking through the various reports of cases, the reader will not fail to observe that by far the greatest number and most important cases relating to horses have been tried before the late Lord Ellenborough, who was rather celebrated than otherwise for possessing excellent horses, and who, in addition to great legal acquirements, had a better practical knowledge of them than any Judge of the past or present times.

In two causes tried before this Learned Lord (and to which I shall have occasion to advert by name more fully hereafter), the law as to what constitutes soundness is laid down in the following concise manner :—

In the first one, he says—

"If a horse be affected by any malady which renders him less serviceable for a permanency, I have no doubt that it is unsoundness."

And in the other—

"I have always held, and now hold, that a warranty of soundness is broken if the animal, at the time of the sale, had any infirmity upon him which

rendered him less fit for present service. It is not necessary that the disorder should be permanent or incurable."

Adopting, then, the doctrine of Lord Ellenborough, that any infirmity which renders a horse less fit for present service, or any malady which renders him less serviceable for a permanency, constitute unsoundness, we have ascertained what state a horse must be in to allow of the general warranty being given; and I think it will be seen on reference, that his Lordship complimented Mr. Taplin, by adopting as law in this century what that gentleman advanced as mere matter of opinion in the last one.

However, were the owners of all horses which do not answer his Lordship's or Mr. Taplin's definition of soundness to be precluded from selling them, I fear very few of the steeds in England would change masters (for I believe it is generally allowed that there are five unsound to every two sound horses): these, therefore, must be disposed of with a qualified warranty, or else without any warranty at all.

Before I proceed to speak of qualified warranty, I must do the Learned Lord the justice to say, that the doctrines expounded by him, particularly in the two cases from which I have quoted, have

gone far to check that indiscriminate use of the general warranty which formerly prevailed; and very few gentlemen owners of horses of the present day warrant their horses at all, or at most only give qualified ones.

I cannot help mentioning a system which is becoming pretty general in London, of gentlemen submitting their horses to the inspection of a veterinary surgeon to decide on their soundness; the usual and equitable terms of which are, that the purchaser shall pay the fee if the horse is pronounced sound, and the intended seller in cases where he is rejected.

A qualified warranty, as I said before, warrants a horse to be sound, with the exception of certain ills or injuries which are specifically pointed out, or named, at the time of sale—as in the case of *Jones* against *Cowley*, where the latter warranted a horse to be sound everywhere except a kick on the leg; which was held by the Court of King's Bench to be a qualified and not a general warranty.

In like manner any other exception can be made, as "warranted sound and without blemish except a thrush or broken knee." And as it is very desirable, in all transactions between man and man, that every circumstance which might raise a

doubt should be avoided, the exceptions should be inserted in the body of the warranty.

In the wording of the warranty it is also desirable to guard against ambiguity.

In a case of *Richardson* against *Brown*, where the warranty given on the sale of a horse was contained in a notice in these terms:—

"To be sold, a black gelding, five years old: has been constantly driven in the plough—warranted:"

The Court decided that the warranty applied only to the soundness.

But in another case of *Coltherd* against *Puncheon*, proof that a horse was a "good drawer" only, was not held to satisfy a warranty that he was "a good drawer, and pulled quietly in harness."

However, some horses, when they change their masters, frequently undergo a great alteration; and a horse that has been perfectly docile in the hands of one man may become completely unmanageable in the possession of another.

If, therefore, the change can be shewn to have taken place subsequently to the purchase, and that the horse was quiet before, it will not invalidate the transaction; for, though a man sells a horse to another, it does not follow that he is to

turn riding-master, and teach the purchaser to manage him.

In the case of *Geddes* against *Pennington*, where the action was brought on a warranty of a horse "thorough broke for gig or saddle," which was proved to be true, and that his bad demeanour in the hands of the purchaser was owing to his want of skill in driving, the Court refused to rescind the contract, notwithstanding there were real circumstances of misrepresentation attending it.

As the warranty (whether general or qualified) applies to the condition of the horse at the time of the sale, it follows, as a matter of course, that it must be given at that time, otherwise it cannot be considered as forming part of the bargain.

In the case of *Eaves* against *Dixon*, which was an action brought by Eaves to recover the value of a horse bought by him of Dixon, but which died a few days after the sale, the plaintiff having failed in proving that there was anything the matter with the horse at the time of the sale, the Judge said—

"On the warranty of a horse it is not sufficient for the plaintiff to give such evidence as to induce a suspicion that the horse was unsound: if he only throws the soundness into doubt, he is not entitled

to recover; the *plaintiff must positively prove that the horse was unsound at the time of the sale.*"

And the seller must remember that he is strictly confined to the terms expressed at the time of sale, and that the terms of the warranty will be strictly construed against him; and that no verbal declarations or qualifications subsequently made will be permitted to explain, after, or discharge the legal effect of the warranty.

But it is an established rule that the original contract is to be construed with equal strictness as to both parties; and a purchaser cannot insist upon the fulfilment of part, and reject the residue. And where a contract or agreement has been once closed and partly carried into effect, it cannot be affected by any declarations subsequently made; for the law then considers them to be made without any consideration, and it will not support transactions where no inducement is expressed or implied.

The purchase-money, or price of the horse, is the consideration here meant; and the law always requires that the cause should be shewn whereby one man is induced to part with his goods to another, or perform any alleged contract; for it will not lend its aid in enforcing the fulfilment of what is called a "*nudum pactum,*" or agreement

to do or pay any thing on one side without a compensation on the other.

For instance: if I promise to give a man a horse, and there is nothing promised or given on the other side, the law will not enforce the performance of my promise.

Formerly it was doubtful whether it were necessary to have a warranty on a stamp or not; but that point is now settled, and it has been decided that it is not.

Mr. Selwyn, in his *Law of Nisi Prius*, says—

"It is usual to insert the warranty in the receipt for the price of the horse; in such case, the receipt, if duly stamped with a receipt stamp, will be evidence of the warranty. It does not now require an agreement stamp."

The question was tried before Lord Ellenborough, in an action brought by *Skrine* against *Elmore*, on the warranty of a horse: to prove which, Skrine produced a written paper, signed by Elmore, which had a receipt stamp, and contained a receipt for the price of the horse with the words "warranted sound" subjoined.

Elmore's Counsel objected that this was not evidence for the purpose of proving the warranty without an agreement stamp.

Mr. Dampier, who was the plaintiff's Counsel, said that Mr. Justice Lawrence had decided that such a receipt might be received in evidence to prove the warranty as well as the payment of the price of the horse, if it had a receipt stamp merely; to which doctrine Lord Ellenborough assented.

The trial of *Hands* against *Burton* is also a case in point.

Some people still rely upon the now-exploded doctrine as to an implicit warranty arising out of giving what is called a "sound price" for a horse; that is, such a price as, from the appearance and nature of the animal, would be a full and fair price for it if in fact it were free from blemish and vice: and I merely mention it, in order that no one may be induced to relinquish any of that vigilance and circumspection so necessary in the purchasing of horses, and so ably recommended by Mr. Taplin on the faith of this doctrine.

It was first started by Mr. Christian, in a note to his edition of Mr. Justice Blackstone's *Commentaries on the Laws of England;* but Mr. Selwyn says—

"Formerly, indeed, it was a current opinion that a sound price given for a horse was tantamount to a warranty of soundness; but it was observed

by Justice Grose, in *Parkinson* v. *Lee,* that when that doctrine came to be sifted, it was found to be so loose and unsatisfactory a ground of decision, that Lord Mansfield rejected it, and said that there must either be an express warranty of soundness, or fraud in the seller, in order to maintain the action."

It has, however, been decided in several cases*, that the price paid is a circumstance entitled to weight where there is evidence of express warranty, although not clearly shewn; and may be coupled with a knowledge of the defect in the seller, or other circumstances of suspicious dealing on his part, to raise the question with the Jury of *fraud,* entitling the purchaser to recover back the purchase-money.

* Chandelor *v.* Lopus, Cro. Jac. 4.
Parkinson *v.* Lee, 2 East, 323.
Mellish *v.* Motteux, Peake, 156.
Baglehole *v.* Walters, 3 Camp. 154.
Lewis *v.* Cosgrave, 2 Taunt. 2.

## CHAP. II.

We have now seen the course to be pursued on the purchase or sale of horses: we have also seen in what state the law requires a horse to be with which a general warranty of soundness is given, as well as the circumstances requiring a qualified one; and we have seen the time when such warranty, whether general or qualified, must be given.

To enumerate the various ails and injuries to which horses are liable, and which constitute unsoundness, would far exceed the limits of a work of this nature.

Most of them are notoriously so to the commonest observer; and many, on which a doubt may exist, will be found described, together with their relative causes, appearances, and consequences, in the pages of a Taplin, a White, or a Lawrence.

There are, however, a few cases which seem to require a specific notice; for, notwithstanding the

law upon some of them may be established, the general reader is not aware of the fact; while other cases are as yet either doubtful, or have no rule whatsoever laid down respecting them.

I shall commence, therefore, with a case respecting what is commonly called

## BUCK EYES.

THE eye of the horse is such a difficult matter to judge of, and liable to so many injuries, that it is almost impossible for any but a veterinary surgeon to give an opinion respecting it.

In actions where the alleged breach of warranty consists in a defect in the eye, it is a very difficult matter, after any lapse of time, to prove the existence of the disease prior to the sale.

There was a trial took place at Guildhall very lately, where the plaintiff, although a lawyer, failed in his proof of unsoundness.

The action was brought by Mr. Earle, a solicitor, residing at Romford in Essex, against a person of the name of Patterson.

It appeared, that on the 11th of last February Mr. Earle came to London, and put up his horse at the stables of a person named Milbank, residing at London Wall, where he saw the mare which

was the subject of the action, and finally purchased her for thirty-one pounds, the defendant having warranted her sound. The mare was then given to a carrier to be conveyed to Romford; and on the road the carrier observed that she began to stare and whisk about, which led him to conclude that something was the matter with her eyes, and he imparted his suspicions to the plaintiff, Mr. Earle, who, however, attributed the symptoms to the mare not having been worked for some time, and having been kept in a warm stable. At the end of three weeks the defect in the eyes of the mare became more apparent, and it was then ascertained that she was what was technically termed "buck-eyed;" and after the lapse of six weeks, she lost the sight of one of her eyes: and, from the state in which she appeared to the veterinary surgeon by whom she had been examined, it was clear that at the time of sale the animal had an incipient disease. The plaintiff was ultimately obliged to dispose of the mare for thirteen pounds; and he now sought a verdict for the difference between that sum and the price which he had paid for the animal.

*Mr. Thomas Milbank* proved the sale of the mare for thirty-one pounds. The bargain was

made at witness's stables at London Wall, and the mare was taken away by a Romford carrier.

*Cross-examined by Serjeant Taddy.*—The sale took place in February last, and there were frost and snow on the ground. The mare had been kept in a warm stable prior to her removal; and it was probable that taking her suddenly into the open air, with only one cloth to cover her, would have produced inflammation in her eyes.

A Romford carrier deposed to his having conveyed the mare from the stables of the last witness to the plaintiff's stable at Romford. On the road she started at objects, and discovered symptoms of being "buck-eyed."

*Mr. Wm. Sewell*, the veterinary surgeon, proved that he examined the mare by direction of the plaintiff about six weeks after the sale, and found that she had a confirmed cataract in one of her eyes, and that she was what is called "buck-eyed"—a disease which rendered her near-sighted.

In his cross-examination the witness said that inflammation in the eyes of a horse might be occasioned by a too sudden exposure to cold after the animal had been used to warm clothing.

Other witnesses were called for the plaintiff, and gave similar evidence to the foregoing.

Mr. Serjeant Taddy addressed the Jury for the defendant, and denied that the mare had any incipient disease at the time the defendant sold her to the plaintiff. The cause of the inflammation in her eyes was the improper way in which she had been conveyed to Romford: and to prove that the plaintiff was satisfied with his purchase, he not only made no complaint for several weeks after, but actually said he would not take fifty guineas for the animal, she suited his wife so well. It then appeared that he sold the mare for thirteen pounds, without having given any previous notice to the defendant.

Two witnesses were then called forward on the part of the defendant. One of them proved that he had frequently ridden the mare, and never considered that any thing was the matter with her eyes: and the other said, that he would have given fifty guineas for the animal before she had been sold to the plaintiff.

The Lord Chief Justice Tindal charged the Jury, who, after a short consultation in the box, agreed to retire; and, after remaining out of Court for five hours, they returned with a verdict for the defendant.

### CAPPED HOCKS,

or an enlargement of the cap of the hock, does not often cause lameness, though it is a blemish.

At the Veterinary College, they generally recommend a special warranty against unsoundness arising from it to be taken.

### COUGH.

In a case of *Elton* against *Brogden,* tried before Lord Ellenborough, he says,

*" While a horse has a cough, I say he is unsound, although that may either be temporary or prove mortal."*

I may here observe, that the opinion expressed by his Lordship in this case respecting coughs seems to have been rather gratuitous; inasmuch as the real question was, whether temporary lameness constituted unsoundness. Nevertheless it is well worthy of attention; for I know by experience that very many people consider coughs of trifling or no importance; and I have known gentlemen, who would disdain to do a mean or dishonorable act, who have, through sheer ignorance of the fact, neither scrupled to sell and

warrant, nor even to buy, horses with them; and it is only those who have witnessed the direful effects produced by coughs—which, from his Lordship's mentioning the subject in this manner, I dare say *he* had—who attach the importance to them which they deserve.

However in a subsequent case, of *Shillitoe* against *Claridge*, the question came specifically before his Lordship, when he maintained the opinion expressed in *Elton* against *Brogden*.

It appeared that the horse had a cough at the time of sale, and that he had been bled for it before he was sold, and there was no evidence of any mismanagement by the buyer; and it appeared he was told that the horse had a cough, and was only used to the road, and that the purchaser had sent him out hunting.

Lord Ellenborough said—

"If the horse had a cough, he had always held that it was a breach of warranty; and he believed such was the understanding both in the profession and among veterinary surgeons.

"Knowledge," he said, "made no difference.

"He had always understood that a cough was unsoundness; that the horse in question was therefore unsound at the time he was bought; and there was no proof of a discontinuance of

the unsoundness, or that he would have got well if he had not been hunted."

### CRIB-BITING

is a point upon which a judgment has been given, though generally admitted to be an unsatisfactory one.

Mr. White, in his *Treatise upon Farriery*, speaking of crib-biting, says—

"This, though only a trick or habit which a horse gets, and which he may teach another that stands next him, especially a young horse, may be considered as a disorder, because it renders him very liable to indigestion and flatulent colic.

"There is no doubt that in crib-biting a horse swallows air; and I have seen a horse distend his stomach and bowels with it in an enormous degree, and would thereby often get the flatulent colic, and sometimes swell himself so that he can scarcely move."

Others say that it is a habit originating in indigestion, by which the animal wastes the saliva which is necessary to digest his food, the consequence of which is a gradual emaciation.

The question, whether it is to be considered as unsoundness or not, was tried in an action

brought by *Broennenburg* v. *Haycock* before Mr. Justice Burroughs, when his Lordship said he considered it a mixed case of law and fact.

"It is," says he, "a curable vice in its first stage"—(and note, this horse was only proved to be an incipient crib-biter)—"it is a mere accident, arising from bad management in the training of the horse, and it is no more connected with unsoundness than starting or shying. The plaintiff might have demanded a warranty against this particular vice."

Among the veterinary surgeons with whom I have conversed on the subject, not one of them agree with his Lordship in his view of the case.

Where crib-biting exists to a certain extent, I think we may infer, from his Lordship's judgment, that it would constitute unsoundness; and the veterinary surgeons contend that it ought with equal propriety to be considered so in its earlier stage.

Were his Lordship's suggestion of demanding a warranty against every particular fault to be acted upon, the warranty given on the sale of a horse would soon extend into something like the size of a modern conveyance of houses or lands.

On the subject of crib-biting I cannot do better than quote the opinion of Mr. Yare, the inventor

of the new Anti-Crib-biter—a man of great skill, and one who has devoted no small portion of his time to the study and prevention of the vice.

"I have," says he, "no hesitation in saying that a crib-biter is *bona fide* an unsound horse; and notwithstanding the warring litigations that may have occurred occasionally in consequence of the habit, when a totally opposite notion to mine has been entertained on the question, yet I cannot avoid arraying my individual opinion in opposition to the fearful list of dissentients who may start up against me when my assertion is perused.

"I verily believe that *a crib-biter, sold with a warranty of soundness, is to all intents and purposes returnable:* and I think I cannot be accounted unfair or erroneous in this position, founded on the well-ascertained fact that crib-biting horses are injured in their stamina."

Mr. Bracey Clark, a veterinarian of considerable research and experience, says, that

"The crib-biting horse has generally a lean constricted appearance, the skin being contracted about the ribs, or a sunken watery eye, or else too dry; the muscles of the face also, as well as the skin, drawn up with rigidness.

"When unemployed in eating, his almost constant amusement is to grasp the rail of the manger

with his front teeth, then to draw himself up to it, as to a fixed point, by a general contraction of the head, neck, and trunk; at the same time the effort is attended with a grunting sound."

### CURBS.

A curb is a disputed point as to whether constituting unsoundness or not, without having any legal authority that I am aware of laid down on the subject.

It is a considerable swelling below the hough, rather on the outside and back part of the leg.

Mr. Mavor says he considers them unsoundness, unless it can be proved that the horse has been performing all the duties which are required of him for at least three months without producing lameness; he should then, he adds, only consider that they amount to blemishes.

### CUTTING,

or Interfering, arises either from excess of action, called the speedy cut, or is a sign of weakness.

I am not aware that it has ever been the cause of an action, though the case is by no means an uncommon one.

Shoeing may remedy cutting from weakness a little; but a plain leather boot is most to be depended upon, for, as Bracken observes, "a goose will always go like a goose."

Mr. Mavor says, he does not consider cutting to constitute unsoundness if it can be prevented by shoeing or ordinary care.

## HEREDITARY DISEASE.

There are no cases reported wherein hereditary diseases in horses have been the subject of action. The following one, of *Joliff* against *Bendell*, relates to sheep, the verdict in which may be some guide to persons bringing actions where horses are concerned.

The sheep, one hundred in number, were sold with a warranty of soundness. At the time of the sale they were, in appearance, perfectly sound and thriving, and continued so for two months after, when one or two of them exhibited symptoms of a disease called by farmers *the goggles*. The sheep affected shewed signs of giddiness, swelling of the eyes, and hanging of the head. From the time they were first seized they grew weaker and weaker, and for the most part died in about a week or ten days; and, on dissection, there were

signs of water in the head or brain. On the whole, about fifty of the sheep had died under the same appearances; the rest continued apparently well up to the time of trial. There was no contagion—other sheep with which they were fed and kept having continued healthy. Several farmers and others conversant with sheep were called for the plaintiff, who stated the goggles to be, in their opinion, an hereditary disease, arising from breeding *in and in,* or *from relations;* and that sheep so disordered would thrive, and seem to be in sound health generally until two or three years old: that there were no means of discovering by the appearance, or otherwise, that sheep were so affected: that it was generally fatal, and no cure or prevention known for it, and reputed amongst farmers an unsoundness. The evidence for the defendant went to shew that the sheep were of a pedigree free from "breeding in and in," and that others of the same sort and older were perfectly sound. The warranty was proved without dispute, and the sheep were all of the same breed.

For the defendant it was contended, that the sheep having been healthy and thriving at the time of, and for two months after, the sale, must be considered as sound at that time: that, inas-

much as there were no previous symptoms to connect the disease of which they died with their former state of health, there was nothing to shew that the disease existed at the time of sale: and that an hereditary liability to a particular disorder was of too uncertain a nature to be capable of proof, and could not be legally considered as an unsoundness existing at the time stipulated for in the warranty.

Lord Chief Justice Abbot left it to the Jury to say, whether at the time of the sale the sheep had existing in their blood or constitution the disease of which they afterwards died; or whether it had arisen from any subsequent cause?

Verdict for the plaintiff for 120l., the value of the sheep which had died, the defendant agreeing to take back the remainder.

The above case reminds me of the following lines of Lord Byron—*Don Juan, Canto* 1, *v.* 57.

"She married (I forget the pedigree)
With an Hidalgo*, who transmitted down
His blood less noble than such blood should be.
At such alliance his sires would frown,
In that point so precise, in each degree,
That they bred *in and in*, as might be shewn,
Marrying their cousins—nay, their aunts and nieces,
Which always spoils the breed if it increases."

* Hidalgo, a title of rank in Spain.

is an operation performed upon a horse, which, while it neither renders it less fit for present use, nor is it certain of rendering him less serviceable for a permanency, has yet been decided to be a species of unsoundness; on the correctness of which decision a difference of opinion exists in the veterinary profession.

It is an operation invented by Mr. Sewell, the Assistant Professor of the Veterinary College, of which, perhaps, I cannot give a better description than by relating the evidence adduced on a trial when the question was put in litigation.

The action was brought by *Best* against *Osborne*, and the cause was tried at Westminster in 1825.

It was proved that the horse had been nerved.

Several eminent veterinary surgeons were called, who stated that the operation of nerving consisted in the division of a nerve leading from the foot up the leg, and that it was usually performed in order to relieve the horse from the pain arising from a disease in the foot; the nerve cut being the vehicle of sensation from the foot:

That the disease in the foot would not be affected by the operation, and would go on increasing, or not, according to its character:

That horses previously lame from the pain of such a disease would, when nerved, frequently go free from lameness, and continue so for years: that the operation had been found successful in cavalry regiments, and horses so operated upon had been for years employed in active service: but that, in their opinion, a horse that had been nerved, whether by accident or design, was unsound, and could not be safely trusted for very severe work; and that it was an organic defect. The horse in question had not exhibited any lameness.

Chief Justice Best (now Lord Wynford) told the Jury that it was difficult to say that a horse in which there was an organic defect could be considered sound; that sound meant perfect; and a horse deprived of a useful nerve was imperfect, and had not that capacity of service which is stipulated for in a warranty.

I cannot go quite the length the Chief Justice did in considering "sound" to mean perfect.

I should rather say it meant perfect as far as regarded the nervous and organic system; for although a horse may be *minus* an ear or his tail, yet no one would say that he was an unsound horse on that account, though the word "blemished" would be properly applied to the defects.

The operation of nerving being a production of the Veterinary College, I need scarcely add that the members of that establishment are dissatisfied with the verdict in the cause I have mentioned. However, I may add that I have found more veterinary surgeons who approve of it than the contrary.

### QUIDDING.

There are some infirmities which have been repeatedly the subjects of actions at law, but on which, from the conflicting nature of the evidence adduced, the Judges have found it impossible to lay down any general rule.

Among these may be classed what is called Quidding.

Mr. Mavor says it arises in consequence of the processes of the teeth growing jagged, or from one or more of the teeth in one jaw becoming indented into the teeth of the opposite jaw.

" Extreme cases," he says, " may constitute unsoundness, if it prevents the proper mastication of the food for the purpose of digestion, so that the body is deprived of sufficient nourishment.

" This complaint sometimes passes by the name of gagg teeth."

is a point upon which one Judge has delivered two opinions—the latter upsetting the former, and establishing it to constitute unsoundness.

The first opinion was given in an action, *Bassett* against *Collis*, in 1810, where a roarer had been sold with a warranty of soundness; and Lord Ellenborough, before whom it was tried, said—

"It has been held by very high authority that roaring is not necessarily unsoundness; and I entirely concur in that opinion.

"If the horse emits a loud noise, which is offensive to the ear, merely from a bad habit which he has contracted, or from any cause which does not interfere with his general health and muscular powers, he is still to be considered a sound horse: on the other hand, if the roaring proceeds from any disease or organic infirmity which renders him incapable of performing the usual functions of a horse, then it does constitute unsoundness.

"The plaintiff has not done enough in shewing that this horse was a roarer: to prove a breach of the warranty, he must go on to shew that the roaring was symptomatic of disease."

The plaintiff in this action did not recover; but

in a subsequent case, of *The Hon. Mr. Onslow* against *Eames,* tried in 1817, when Mr. Onslow came before the Court he profited by the hint thrown out by his Lordship, and accordingly brought Mr. Field, the veterinary surgeon, to prove the real origin, or cause, of roaring.

Mr. Field, in his evidence, stated it

"To be occasioned by the circumstance of the neck of the windpipe being too narrow for accelerated respiration; and that the disorder is frequently produced by sore throat or other topical inflammation; and that the disorder was of such a nature as to incommode a horse very much when pressed to his speed."

Mr. Marryatt, who was Counsel for Eames, relied upon the old story of a very high authority having decided that roaring did not constitute unsoundness; and I dare say (from the previous judgment given by the same Judge, in *Bassett* against *Collis,* as was trying the present cause) felt confident of a verdict for his client.

But Lord Ellenborough said—

"If a horse be affected by any malady which renders him less serviceable for a permanency, I have no doubt that it is unsoundness: I do not go by the noise, but by the disorder."

And from that time down to the present day

roaring has been admitted to be a species of unsoundness.

Being on this subject, I will just add Mr. Mavor's opinion on roaring, and also on the subject of high blowers, contained in an answer to the following question :—

" What is the difference between a roarer and a high blower ; and do you consider them to constitute unsoundness ?"

" The difference between a roarer and a high blower exists only in variety of the same disease : the latter arising from disease of the larynx or its appendages, and the former more frequently is the effect of general inflammation in the organs of respiration.

" Either I hold to constitute unsoundness."

### SPLENTS

have been the subject of several actions ; but, for the same cause as that assigned with respect to the cases relating to Quidding, no account of them is to be found in the law reports.

They are defined to be hard excrescences of different shapes and sizes on the shank bone, and I believe are not considered dangerous unless situated near the joints, or appear very large upon the

back part of the bone, or press against the back sinew.

Mr. Mavor says he does not consider them to constitute unsoundness unless accompanied by lameness, or are likely to cause lameness by performing such duty as the horse is calculated for.

### STRING HALT,

or a singularly high motion or twitching up of the hind legs, I believe, is not considered to constitute unsoundness; but there are no recorded cases in point. It is, however, a most palpable blemish.

### TEMPORARY LAMENESS

seems to be an injury which will not support a general warranty of soundness.

A contrary opinion formerly prevailed, founded upon the doctrine laid down by Sir James Eyre, when Chief Justice of the Common Pleas, in an action brought by one *Garment* against a person of the name of *Barrs*, in the year 1798, on a general warranty of a mare.

The evidence shewed, that at the time of sale Garment observed that she went rather lame of one leg, which Barrs said was occasioned by her taking

up a nail at the farrier's; and his Lordship said, that

"A horse labouring under a temporary injury or hurt, which is capable of being speedily cured or removed, is not for that an unsound horse; and when a warranty is made that such a horse is sound, it is made without any view to that injury: nor is a horse so circumstanced an unsound horse within the meaning of the warranty."

*Elton* against *Brogden* was also an action brought on a general warranty of soundness, and the plaintiff proved that the horse was lame at the time of sale.

Brogden, the defendant, admitted this, but undertook to prove that the lameness was of a temporary nature, and that the horse afterwards recovered, and had since been in all respects sound.

Lord Ellenborough, before whom the action was tried, said—

"I have always held, and now hold, that a warranty of soundness is broken, if the animal at the time of sale had any infirmity upon him which rendered him less fit for present service. It is not necessary that the disorder should be permanent or incurable."

### THOROUGH PIN.

A thorough pin is an enlargement on each side of the hock, and in appearance resembles a wind-gall. In its earlier stages it does not produce lameness, and generally yields to blistering. If not taken in time, firing becomes necessary; but at no time can a horse with one be safely sold with a general warranty of soundness.

### THRUSH.

There have been several cases tried respecting "Running Thrushes," as they are commonly called; but the reporters say there was always so much contradictory evidence adduced that the Court found it impossible to lay down any general rule.

Mr. Taplin says—

"A thrush is a varicose state of the frog, which becoming perforated in different parts bears the appearance of rapid decay and rottenness, occasioned by an ichorous corrosive discharge, frequently the evident effects of neglect in suffering the horse to go badly shod till the frog, by repeated bruises, loses its original property and becomes diseased.

" To inattention," he says, " the complaint is generally owing; and by early care it is generally cured—though (he adds) there are undoubtedly instances of such defects being what are termed natural blemishes."

Professor Coleman ridicules the idea of a thrush being considered as unsoundness; though he says, that in the case of a horse being sent to the Veterinary College for examination with one, he should mention the circumstance in his certificate of examination.

Mr. Mavor's answer to the question—

" Do you consider thrushes unsoundness?"

Says—

" I do not consider a horse unsound with a thrush if it is only a slight discharge from the cleft of the frog, without any alteration in the structure or appearance of the frog; but if the frog is altered in its structure, I then pronounce it unsoundness."

## WEAVERS.

Weaving is merely a trick of moving the fore part of the body from side to side in the stall, resembling a weaver throwing the shuttle.

It is not considered injurious.

## WIND-SUCKERS.

Wind-sucking is nearly the same as crib-biting, only the horse does not take hold of the manger. Some consider it worse, others not so bad: no one, however, considers it a recommendation, and many people require a warranty against it.

## CHAP. III.

### VICE.

I HAVE not been able to find any cases wherein the question has been tried whether a general warranty of soundness will be construed, according to Mr. Taplin's definition, to extend to vice and blemishes, or to either; neither do I find any cases arising out of the sale of vicious horses: but the anonymous writer on the "Law of Horses," who I mentioned in my introduction, says—

"So, where the warranty extends to freedom from vice or blemish, it is sufficient that the animal has any disposition or habit incompatible with the safety of an ordinary rider to make it a breach of warranty."

He does not, however, cite any authority in support of his assertions.

It may be observed, that he talks of cases where the warranty *does* extend to assurance against vice and blemish; but as horse-dealers (and they are the people who generally make use of warranties) seldom or ever introduce more than the words "warranted sound" into their receipts for the price of the horse, unless expressly desired, I

recommend all purchasers to insist upon the addition of the words, "free from vice, and without a blemish."

But even with these I fear a purchaser can scarcely consider himself secure.

A curious case occurred to me some years ago, arising out of the omission of the above words.

My brother being in want of a hunter, we were walking together through a public horse-fair held in the streets of a country town, when our attention was attracted by a very neat-made chesnut horse rode past by a dealer.

We stopped him, and, after riding the horse and approving of him in every respect, my brother purchased him for some fifty or sixty guineas, taking the usual receipt for the money, which I wrote out, adding the words "warranted sound in every respect."

The horse did very well at first, but he was soon discovered to have a trick of drinking at every watering place he came to; and so resolute was he in his determinations, that, if checked, he would rear and walk on his hind legs up to the trough, and very likely place his fore-legs in it, to the risk of breaking his knees (the troughs being all made of stone in that country); and on the last day my brother rode him, he had been obliged to let him

almost burst himself with water at one, lest he should take into his head to walk into a deep river along the banks of which he had to pass.

On finding this to be the case, I went to the dealer and told him he must take his horse back, for the trick he had rendered him quite useless as a hunter, for which purpose he had been bought; and I added that I considered he was vicious.

This, of course, the dealer denied, and, after talking some time about it, he gave me the following piece of advice:—

"You should, Sir," said he, "have added *free from vice* to the warranty: but even then I should not have taken him back, for this is not vice, but playfulness." ! ! !

It was rather rough play certainly; but the words being omitted, we did not feel ourselves in a situation to try whether the Judge would agree in the construction our friend put upon his warranty of soundness, and therefore made the best of a bad bargain, and exchanged the horse for another, taking care to add the words in the next receipt.

Whether this would have been considered by the Judge to be vice, or merely a disagreeable trick or habit, is, I think, doubtful; though there is no denying that a horse with a belly full

of water is ill able to perform the duties of a hunter.

Another case of a similar nature occurred to me a few years ago.

I purchased a horse at an auction-mart for a friend, which was "warranted sound and quiet to ride," and though it answered both the specifications, yet when my friend came to ride it, owing to some fault or other in the breaking, it would only turn to the right side, consequently when the rider wished to go to the left he was obliged to wheel quite round. However, we did not consider it a case where we could return the horse upon the warranty.

I think the following receipt and warranty, though somewhat prolix, would guard against most circumstances:—

"London, July 1, 1830.

"Received of A. B. the sum of fifty pounds for a chesnut gelding, which I hereby warrant to be only six years old last grass; and also that he is sound, free from vice, restiveness, and faults (particularly crib-biting and wind-sucking), and that he is quiet to ride (or drive), and without a blemish.

"£50 0 0 "C. D."

It may be as well to add, that not many people will give the above receipt; therefore I advise a

purchaser to get as much of it as he can, and to examine the horse particularly to see if he has any of the faults or propensities about him which the owner objects to warrant him free from.

## NEW STAMP DUTIES RECEIPTS.

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 2*l.* | and | under | 5*l.* | 0*s.* | 2*d.* | 200*l.* | and | under | 300*l.* | 4*s.* | 0*d.* |
| 5 | ditto | 10 | | 0 | 3 | 300 | ditto | 500 | | 5 | 0 |
| 10 | ditto | 20 | | 0 | 6 | 500 | ditto | 1000 | | 7 | 6 |
| 20 | ditto | 50 | | 1 | 0 | 1000 or upwards | | | | 10 | 0 |
| 50 | ditto | 100 | | 1 | 6 | Receipts in full of all demands | | | | 10 | 0 |
| 100 | ditto | 200 | | 2 | 6 | | | | | | |

N. B. Receipt Stamps necessary if money be paid by promissory notes, &c.

*Inland Bills of Exchange.*—Draft or Order to the Bearer, or to Order, either on Demand or otherwise—

| Not exceeding 2 months after date, or 60 days after sight: | | | | | | | | For a longer period. | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| If | | | 2*l.* | 0*s.* | | 5*l.* | 5*s.* | | 0*l.* | 1*s.* | 0*d.* | 0*l.* | 1*s.* | 6*d.* |
| Above | 5 | 5 | | | And not exceeding | 20 | 0 | | 0 | 1 | 6 | 0 | 2 | 0 |
| Above | 20 | 0 | | | | 30 | 0 | | 0 | 2 | 0 | 0 | 2 | 6 |
| Above | 30 | 0 | | | | 50 | 0 | | 0 | 2 | 6 | 0 | 3 | 6 |
| Above | 50 | 0 | | | | 100 | 0 | | 0 | 3 | 6 | 0 | 4 | 6 |
| Above | 100 | 0 | | | | 200 | 0 | | 0 | 4 | 6 | 0 | 5 | 0 |
| Above | 200 | 0 | | | | 300 | 0 | | 0 | 5 | 0 | 0 | 6 | 0 |
| Above | 300 | 0 | | | | 500 | 0 | | 0 | 6 | 0 | 0 | 8 | 6 |
| Above | 500 | 0 | | | | 1000 | 0 | | 0 | 8 | 6 | 0 | 12 | 6 |
| Above | 1000 | 0 | | | | 2000 | 0 | | 0 | 12 | 6 | 0 | 15 | 0 |
| Above | 2000 | 0 | | | | 3000 | 0 | | 0 | 15 | 0 | 1 | 5 | 0 |
| Above | 3000 | 0 | | | | | | | 1 | 5 | 0 | 1 | 10 | 0 |

In order to set aside a bargain for horses (or indeed for any thing else) any fraud or deception practised at the time of the sale will avoid the contract; and it is not absolutely necessary that the horse should be unsound, so as to constitute a breach of the warranty, in order to annul a bargain where fraud has been practised.

But if a man will not use his endeavours to protect his own interest, the law will not take cognisance of the impositions which may be practised upon him owing to his negligence.

*Vigilantibus non dormientibus jura subveniunt*— (the laws relieve the careful, not the negligent)— is an ancient maxim in the law, and forms an insurmountable barrier against the claims of an improvident purchaser.

In *Dyer* against *Hargrave* (a case in Chancery), a purchaser was compelled to take an estate, though varying from the description inserted in the particulars of sale, in consequence of not having taken the trouble to inquire into the truth of the statement.

And in another case, of *Bayly* against *Merrel*, it was held that no man was bound give credence to

another's speech: and the Judges instanced a case where a person buys a horse under a warranty that he has both his eyes, when he hath but one, in which case the buyer is remediless; for it is a thing which lies in his own cognisance, and such warranty or affirmation is not to be material, or be regarded; but otherwise it is, in cases where the matter is secret, and properly in the cognisance of him who warrants it.

I remember a case of deception, which I think was brought before one of the Police Offices, and I merely mention it to shew the impositions some people attempt to practise in the sale of horses.

It appeared that a Quaker had a horse for sale, which, like many others, was "the best in England," and meeting with a customer who wanted a gig-horse, he of course recommended his own.

The purchaser inquired if he was quiet in harness; to which the Quaker replied—"Friend, it would delight thine eyes to see him draw:" whereupon he purchased him, and immediately put him into a gig, which he broke all to pieces.

The purchaser remonstrated with the Quaker, and told him that he had warranted the horse to go "quiet in harness:" upon which the Quaker replied, "No, friend, I did not: I merely said "that it would delight thine eyes to see him draw;

and faith so it would delight mine too, for he never would bear a pair of shafts in his life."

### COPEING.

There is a species of swindling carried on in London under the cloak of horse-dealing, called couping, or copeing, of which persons living in the country have no conception, and are therefore frequently the dupes.

A party of scoundrels purchase a fine-looking horse to which has happened some accident, perhaps become blind or broken winded, or who has something the matter with him, which, while it renders him perfectly useless, is not apparent at first sight.

If, which may sometimes be the case, he is a well-known hunter or racer, he is advertised as such, and that he is to be sold a bargain. If his fine looks are his only recommendation, they frequently fix upon some well-known horse to which he bears a resemblance, and advertise him as such, generally taking care to word the advertisement so as to leave what they consider a loop-hole to creep out at. For instance, the following one appeared in the *Times* newspaper of the 19th of July last:

"For sale, that brilliant short-legged hunter Clinker, well known in the Leicestershire Hunt, beating nine crack horses in the Steeple Chase. Clinker is seven years old, fifteen hands three inches high, equal to fifteen stone, and he defies any horse in England to surpass him—he can top the highest fence ever made, and tail the fleetest hounds. He is a treasure to any sportsman, and why parted with will be explained. Inquire," &c.

The person referred to is generally one of the gang, whom they establish in a small shop with a few pounds worth of spectacles, fruit, or any thing to make a show of; or else he is advertised as a private servant, with directions to inquire for Charles or John at such and such a place.

The stable (which may be either a blackguard sort of livery or commissioned one, or perhaps a private one, such as a petty tradesman requiring a horse to draw his cart would have) is in the immediate neighbourhood of the shop or place of reference, where, or in the stable, the person who acts as owner and a groom are to be found.

A gentleman of my acquaintance, being struck by the advertisement respecting Clinker, went out of curiosity to see him, and found things arranged as I have described.

The pretended owner, a clean neatly-dressed respectable-looking man, was in the stable, and

stated that the horse was Captain Ross's Clinker, to whom he said the gentleman might write for information. That his (the owner's) brother was a farmer and breeder, residing at Atherstone in Warwickshire, and had received Clinker from Captain Ross in exchange for another horse, and that he had him from his brother. That he was himself a corn merchant, and merely kept horses to go in his corn cart, for which purpose he thought Clinker too valuable, that he would sell him for eighty pounds, warrant him sound, allow any reasonable trial, and take a bill for the money.

Another gentleman, knowing who the fellow was, went to him on the following day, and asked where he could meet him at a certain hour; to which he replied that he was going to the corn market, but should be back by a certain time. However the gentleman somewhat puzzled him by telling him it was not corn market day.

He then produced a letter, saying that it was from Lord Anson's groom, stating that his Lordship had seen the advertisement respecting Clinker, and wished to purchase him, and that the writer would be in town a few hours after the receipt of the letter for that purpose. Unfortunately, however, though purporting to have come by the post

from Warwickshire, the letter was without a post mark.

The horse, I am told, was a very fine-looking animal, fully answering the advertisement, though certainly not Captain Ross's horse called Clinker, which it was the object of the advertiser to make the reader believe: however, there is no doubt but he was ruined in some way or other, and merely doctored up for the occasion.

The advertisements are differently worded, but generally in the style of the one I have given. Sometimes they assume the philanthropics, and state, "that price is not so much an object as to get the horse into good hands, and where he will be well taken care off!!"

The stables are situated in different parts of town, and, in fact, it is now becoming a regular business.

To men who have passed their lives in the busy world of London a notice of this nature may appear superfluous; but the plans of these swindlers are really so deeply laid, and managed with so much dexterity, that the most cautious may be disarmed by the speciousness and apparent honesty of the scoundrels. In proof of which I need only say, that two gentlemen, both members of the legal

profession, and possessed of more than ordinary penetration, though expressly told that the thing was a cheat, after seeing the man and hearing him talk they began to doubt the truth of their information.

I must, however, add, that the man they saw was the prince of the gang, though many others only want his tact to be equally bad, their deficiency in which luckily makes them less dangerous. A purchaser, under these circumstances, cannot hope to recover his money in an action against the swindlers; and his only remedy is to indict each person, who appeared either as principal, agent, or accessory, for a conspiracy to defraud, by doing which he will confer an infinite service upon the community.

## AGE.

In purchasing horses the age is a matter of great importance, inasmuch as the value of a horse greatly depends thereon, and, like most other things of consequence, is a very difficult matter to agree upon.

Talking of knowing a horse's age by his teeth, the same writer I have before quoted (Mr. Taplin) says—

"Much multifarious matter has constantly been written relative to the age of a horse by his mouth, when (after all the observations upon the subject) it becomes an acknowledged fact by every writer, each sign is doubtful, and liable to deception in the various arts and designs of dealers, who, by engraving and burning artificial marks in some teeth, and totally extracting (or beating out) others, render the horse any seeming age most applicable to their purpose. And these faults cannot easily be discovered but by grooms or judges who are in the constant habit or practice of making such remarks and observations.

"Nor is there any matter in a horse requiring a nicer discrimination in judgment than to ascertain to a certainty the age of a horse by his teeth only, having absolutely seen two men of abilities and experience on the opposite sides of a horse's mouth at the same time declare him of different ages, when by exchanging sides each changed his opinion, and the horse proved by the common rule to be coming a year older on one side than the other. These doubts in respect to the certainty of age being admitted, one fixed rule is incontrovertible—

"That after the mark (which is the general guide) is obliterated, the longer the teeth are, and

the narrower the under jaw is towards its extremity, the more the horse is advanced in years."

There was a cause tried before Lord Kenyon, *Dunlop* against *Waugh*, where Dunlop stated, at the time he sold the horse, that he knew nothing of his age save from a written pedigree; and his Lordship decided that it could not be construed into warranting him to be of a certain age.

But there is no doubt that any express age specified as of the parties' own knowledge would equally amount to an assurance that he was of that precise age, as a general warranty would that he was sound.

TRIAL.

With respect to the length of time to which a warranty shall extend (or rather, what shall be considered a reasonable time for trying whether the horse answers the warranty given or not), there does not appear to be any general rule on the subject; and indeed it is almost impossible to lay down any thing like one.

Judge Blackstone in his *Commentaries* says, that "a warranty can only reach to things in being at the time of the warranty made, and not to things *in futuro*—as, that a horse is sound at the buying

of him, and not that he will be sound two years hence."

This doctrine has since been doubted; and Lord Mansfield declared, in a case where the above opinion was quoted, "that there is no doubt but you may warrant a future event."

However, this is not a very likely case to occur; for most people, I believe, consider themselves very fortunate if they can warrant their horses safely at the time of sale, without diving into futurity.

"Trial," say the law books, "means a reasonable trial," leaving us just as much in the dark as ever.

We have seen that the warranty must be given at the time of the purchase or sale of the horse, in order that it may be considered as part of the contract; we have also seen that fraud practised at the time of the sale, whether the horse prove sound or not, will vitiate the contract; and it has been expressly laid down by Lord Loughborough, in a cause of *Fielder* against *Starkin*—

"THAT NO LENGTH OF TIME ELAPSED AFTER A SALE WILL ALTER THE NATURE OF A CONTRACT ORIGINALLY FALSE."

The following are the particulars of the case:—

Starkin sold Fielder a mare, which he "war-

ranted sound, quiet, and free from vice and blemish."

Soon after the sale Fielder discovered that she was unsound and vicious; viz. that she was a roarer, had a thorough-pin, and also a swelled hock from kicking: nevertheless he kept her three months, physicking and using other means to cure her; at the end of which time he sold her, but had her soon after returned as unsound; when he passed her back to Starkin, who refused to receive her.

On her way back from Starkin's she died, and upon examination it was the opinion of the veterinary surgeon that she had been unsound a full twelvemonth before her death; but it did not appear that Fielder had during the three months, though in Starkin's company, ever complained of the mare being unsound.

Lord Loughborough said—

"Where there is an express warranty, the warranter undertakes that it is true at the time of making it.

"If the horse which is warranted sound at the time of sale be proved to have been at that time unsound, it is not necessary that he should be returned to the seller.

"*No length of time elapsed after the sale will*

*alter the nature of a contract originally false;* though the not giving notice will be a strong presumption against the buyer that the horse at the time of the sale had not the defect complained of, and will make the proof on his part more difficult."

I think it stands to reason that a person having purchased a horse under a warranty of soundness, or indeed any other warranty, on finding that he does not answer that warranty, and intending to return him, is bound to lose no time in doing so; though what will be considered a reasonable time must necessarily depend upon the particular circumstances of the case.

There is a cause of *Adams* against *Richards*, where Richards sold Adams a horse, with an agreement to take him back if he should be found faulty.

Adams kept him six months after he discovered that he was restive, and he was not allowed to recover.

But whenever the horse is returned he must not be in a worse condition than when sold.

*Curtis* against *Hannay* is a case in point, and was decided by the late Lord Chancellor Eldon when Chief Justice of the Court of Common Pleas. Hannay had sold Curtis a horse, which he war-

ranted generally; and after the sale Curtis was informed that he had a defect in his eyes, but nevertheless he kept him for nearly seven weeks, in which time, suspecting the horse to have some defect in his feet, he had applied certain remedies, which produced a running thrush and a considerable degree of lameness: it was, however, only temporary; and it was in evidence that the remedies applied to the feet could not have affected the eye.

Lord Eldon said—

"The question was, would the horse when returned to the seller be diminished in value by this doctoring?"

And he delivered the following opinion:—

"I take it to be clear law that if a person purchases a horse which is warranted, and it afterwards turns out that the horse was unsound at the time of the warranty, the buyer may, if he pleases, keep the horse, and bring an action on the warranty, in which he will have a right to recover the difference between the value of a sound horse and one with such defects as existed at the time of the warranty: or,

"He may return the horse and bring an action to recover the full money paid: but in the latter case the seller has a right to expect that the horse

shall be returned to him in the same state he was when sold, and not by any means diminished in value: for if a person keeps a warranted article for any length of time after discovering its defects, and when he returns it it is in a worse state than it would have been if returned immediately after such discovery, I think the party can have no defence to an action for the price of the article on the ground of non-compliance with the warranty, but must be left to his action on the warranty to recover the difference in the value of the article warranted, and its value when sold."

In *Ellis* against *Mortimer* the action was brought to recover thirty guineas, the price of a horse sold by plaintiff to defendant upon an agreement for a month's trial, and to be at liberty to return him at the end of the month if he did not like him.

After keeping him about a fortnight, he said he liked the horse but not the price, upon which the plaintiff desired him, if he did not like the price, to return the horse: the defendant kept him ten days after this, and then sent him back within the month, but the plaintiff refused to receive him.

The Court held that the effect of the contract was that the defendant should have to the end of the month to decide, and that he had not determined the contract until he had actually re-

turned the horse, and that the action could not therefore be supported.

Where a seller allows a trial, accidents may happen during the time, and yet no general rule can be laid down: each of these cases must therefore depend entirely upon their own merits.

For instance, if a person rides a horse on trial with hounds "which is warranted an excellent hunter and in good hunting condition," and the horse dies in consequence of his exertions in the field; yet unless it be proved that he rode him unfairly, contrary to his usual custom, or pressed him after he was exhausted, I take it the owner could not recover.

Circumstances may also occur to prevent a trial whether a horse answers his warranty, as in the case of one "warranted a good hunter."

Now were a frost to come the day after he was purchased, and it was to continue for several weeks, whereby the purchaser was prevented from trying his qualities as a hunter, still he ought not to be precluded from returning it, if on the breaking of the frost he was not found to answer the warranty.

In warranting a horse a "good hunter," I believe the warranty is generally considered to refer to his fencing; and though he may be as slow as possible, yet if he is a good leaper, the warranty

will be answered: not so, where he is warranted "a good hunter and fast."

### RETURNING.

Difficulty often arises in returning horses when discovered to be unsound, particularly when they have been purchased of dealers.

It is advisable in all cases to make an offer of the horse, because on that being done and refused, the purchaser will have a right to recover damages for the expenses of his keep in addition to the price paid.

However, it can always rest in the option of the purchaser whether he will return him or not.

If the horse is returned (and presuming he is not in worse condition or state than when sold) the purchaser will have a right to recover the price paid for him.

If he is not returned, the purchaser will have a right to recover the difference between his value and the price given; or if sold to a third person, the difference between the price received for him and the one paid in the first instance.

In the case of *Caswell* against *Coare*, where the action was brought on the breach of the warranty, but where there was no proof of the horse having been offered back, Lord Mansfield said—

"The contract being broken, the defendant must give back the money, and the plaintiff must return the horse; but unless he has previously tendered him he cannot recover for the keep, because it was not the defendant's fault that the plaintiff kept him."

I must, however, add, that the law upon this point is not decided.

In the trial at the Summer Assizes at Bristol, in 1826, of *M'Kenzie* against *Hancock*, Mr. Justice Littledale said—

"Notwithstanding a contrary opinion prevails, I think the plaintiff is entitled to recover the expenses for such a period only, as under all the circumstances of the case the Jury may fairly think a reasonable time for re-selling the horse."

This opinion seems open to objection, because the purchaser would naturally get rid of the horse as soon as possible without much regard to price; and the defendant would frequently lose much more by the sale than by persisting in his obstinacy in not taking the horse back and paying his expenses.

Besides it opens a door to endless litigation.

## CHAP. IV.

THERE are one or two points relating to horses, which, though not of common occurrence, it still may be as well to know.

### DEALING ON SUNDAY

Is one. All dealings and contracts which are made on a Sunday by persons in their ordinary calling are declared void by the Stat. 29 Charles II. c. 7, s. 2, and, independent of the illegality of the Act, dealing on that day is not a very respectable occupation: however, if the person who buys or sells on a Sunday is not thereby following his ordinary calling, the law will not set aside the contract.

Lord Mansfield said, in the case of *Drury* against *Defontaine*, where an objection was made that the contract for sale took place on a Sunday—

"The bargaining and selling horses on a Sunday is certainly a very indecent thing, and what no religious person would do; but we cannot discover

that the law has gone so far as to say that every contract made on a Sunday shall be void, although under these penal Statutes, if any man in the exercise of his ordinary calling shall make a contract on a Sunday, that contract would be void."

And again, in *Bloxsome* against *Williams*, where Bloxsome made a bargain with Williams, who was a horse-dealer (but of which fact he was ignorant at the time), for a horse on a Sunday, which was warranted, but proved unsound, it was held by Mr. Justice Bailey, that Bloxsome having no knowledge that Williams was a horse-dealer, and exercising his ordinary calling on a Sunday, had not been guilty of any breach of the law, and therefore entitled to recover back the price of the horse on the action for the breach of the warranty.

In *Fennell* against *Ridler*, it was laid down that the Statute I before mentioned "for the better observation of the Lord's Day" applies to private as well as public conduct; and that a horse-dealer cannot maintain an action upon a private contract for the sale and warranty of a horse if made on a Sunday.

### SELLING HORSES BY SERVANTS OR AGENTS

Is rather a dangerous business; and sellers ought

to be very cautious what instructions they give; and the best way is to reduce them into writing, so that they can be shewn to the purchaser, which will prevent the alteration or modification of the terms by the servant.

The Judges are inclined to infer that a servant being employed to sell a horse has an implied authority to warrant him.

By private contract this perhaps is good, because it is generally supposed that horses sold by this means are sound, and will bear scrutinizing; but, were the rule to be extended to sales by auction, great injustice might be done.

In the case of *Alexander* against *Gibson*, where the action was brought upon a warranty given by Gibson's servant,

Lord Ellenborough said—

"If the servant was authorised to sell the horse, and to receive the stipulated price, I think he was incidentally authorised to give a warranty of soundness. It is now most usual on the sale of horses to require a warranty, and the agent who is employed to sell, when he warrants the horse may fairly be presumed to be acting within the scope of his authority. This is the common and usual manner in which the business is done, and the agent must be taken to be vested with power to

transact the business with which he is intrusted in the common and usual manner.

" I am of opinion, therefore, that if the defendant's servant warranted this horse to be sound, the defendant is bound by the warranty."

Mr. Justice Bailey, in a subsequent case, went farther than Lord Ellenborough, and said, in *Pickering* against *Busk*—

" If the servant of a horse-dealer, with express directions not to warrant, does warrant, the master is bound, because the servant, having a general authority to sell, is in a condition to warrant, and the master has not notified to the world that the general authority is circumscribed."

However, in an analogous case of *Fenn* against *Harrison,* where the above opinions were quoted—

Lord Kenyon doubted the propriety of a master's being bound by his servant's warranty, and said he thought the maxim of " respondeat superior" applied.

In *Helyear* against *Hawke,* Lord Ellenborough said—

" I think the master having intrusted the servant to sell, he is intrusted to do all that he can to effectuate the sale; and if he does exceed his authority in so doing, he binds his master."

The circumstances of the case were these.

The horse had been inserted in Tattersall's catalogue, but was not brought to the hammer, and Helyear afterwards, having the catalogue in his hand, inquired of Hawke's groom, who had the care of the horse, if the horse was but seven years old, and if free from vice; to which the latter replied "Yes, if you have him."

And upon an objection to this evidence being received to bind the master, Lord Ellenborough said—

"If the servant is sent with the horse by his master, and the horse is offered for sale, I think he thereby becomes the accredited agent of his master, and what he has said at the time of sale, as part of the transaction of selling, respecting the horse, is evidence; but an acknowledgment to that effect made at another time is not so: it must be confined to the time of the actual sale, when he was acting for his master."

It afterwards appeared that nothing had been said about the price; and his Lordship was of opinion that it could not be deemed a complete contract for the sale of the horse, and would not support a warranty at all.

However, who shall decide when Judges disagree? therefore I arrive at my old position; viz. that the best way is to write down the instructions

if the master either cannot, or does not choose to be referred to; but in the latter case, perhaps Messrs. Tattersall's public auction would answer his purpose better than running any risks.

## LIVERY STABLES.

In a trial before Lord Wynford (when Chief Justice of the Common Pleas), of *Wallace* against *Woodgate*, the law relative to a livery-stable-keeper's lien upon the horses standing in his stables for the expenses of their keep was laid down.

Woodgate was a horse-dealer, and had sold Wallace three horses, and taken his bills of exchange in payment.

As well as being a horse-dealer Woodgate kept a livery-stable, into which (out of the sale stable) he removed the horses in question; but there was no evidence to shew that there was any agreement made that they should remain there until their keep was paid for.

Wallace was in the habit of using the horses whilst they were kept by Woodgate, and one day, under pretence of using them, took them entirely away to another stable.

Woodgate, finding out where they had been removed to, in the absence of Wallace repossessed

himself of them, upon which Wallace brought his action; and the defence was that Woodgate had a right to retain the horses until the keep was paid for, he having a lien by agreement.

The Chief Justice, in summing up, told the Jury that a livery-stable-keeper had not by law a lien for the keep of horses, unless by special agreement with the owner of them; and that if they were satisfied that there was an agreement to that effect, and that Wallace had removed the horses to defraud Woodgate of his lien, then their verdict must be for Woodgate, which they accordingly gave.

An innkeeper, who is *obliged* to take a horse in to stand at livery, though neither the owner nor his servant lodge in the house, is therefore entitled by law to detain the horse until satisfied for his keep: and if he be stolen the innkeeper is liable to an action for his value.

With certain exceptions in favour of trade, the general rule of law is, that all things upon the premises are liable to the landlord's distress for rent, whether they belong to the tenant or a stranger.

Consequently all horses standing at livery are liable to be seized for the landlord's rent.

In London this frequently happens: it is therefore desirable, where a doubt may exist as to the

solvency of the parties, either to inquire of the landlord if the rent be in arrear, or to examine the receipts in the possession of the tenant.

### RESALE BY A PURCHASER, WITH A WARRANTY.

Where a purchaser, relying upon his warranty, sells the horse to another, giving a similar warranty to the one he received, and upon its failing an action is brought against him, and he gives notice of such failure and action to the original seller, who gives no direction for defending or abandoning the cause, the costs sustained thereby will be added to the amount of the original damage accrued by reason of the false warranty, and the second seller will be entitled to recover the sum from the original vendor.

It must, however, be proved that the horse was unsound at the time of the first sale.

### SMITHS.

Where a horse is delivered to a smith to shoe, and he injures him, an action can be brought. So if he delivers him to another smith, the owner may have his action against the latter. And it is said that an action lies for not shoeing according to

promise if the horse is injured from the want thereof.

### VETERINARY SURGEONS.

Formerly it was understood, if a veterinary surgeon undertook to cure a horse of any malady, and through negligence or unskilful treatment he died or was injured, that the owner could recover the value of the horse in an action against the surgeon without proving any express agreement, on the ground that whoever undertakes a duty is bound to exercise proper and competent skill in his occupation.

This doctrine, I am informed by Professor Coleman, was reversed in an action wherein he was a witness, and bore testimony to gross mismanagement on the part of a veterinary surgeon; notwithstanding which the Jury, under the direction of the Judge, returned a verdict for the defendant.

## CHAP. V.

### SALES BY AUCTION.

As the Judges have gradually become more strict in their constructions of general warranties of soundness, and qualified ones do not answer the purpose of sellers as they necessarily diminish the prices obtained; sales by public auction (where the doctrine of "*caveat emptor*"—"let the buyer beware"—well applies) have gained ground.

While they embrace all the advantages of sales by private contract, they get rid of the difficulty of being obliged to specify all defects, and moreover the time that shall be considered a reasonable trial is more accurately defined.

The owner of a good horse has the same advantage of warranting him sound as he has on a sale by private contract, without incurring the risk of having him returned at the end of five or six weeks, or perhaps as many months (unless indeed it can be proved that the cause of the breach of warranty existed at the time of the sale), while the

less fortunate owner of a bad horse puts him up for public competition, and though he may expatiate as largely as ever he likes upon his good points, still (if he does not warrant him) he is not bound to mention any of his imperfections.

There is a species of praise which all sellers are considered at liberty to adopt in disposing of their goods.

In common parlance it is called puffing, and when practised in the selling of horses is termed "chaunting," or singing their praise.

The rule of the civil law was "*simplex commendatio non obligat.*" And where the seller merely made use of those expressions which are usual to sellers who praise at random the goods they are desirous to dispose of, the buyer, who ought not to have relied upon such vague expressions, could not procure the sale to be dissolved upon any such pretext.

The same rule prevails in our law, and has received a very lax construction in favour of sellers.

Unless "chaunting" be coupled with fraud or more particular terms of warranty, the words which are made use of cannot be considered otherwise than as of unmeaning import, and cannot be made the foundation of an action.

Though puffing or chaunting is sometimes prac-

tised in dealers' yards, it is more generally considered to be the attribute of sales by auction, where a knot of persons getting together continue to praise a horse in the hearing of a stranger, who is thereby perhaps induced to become the purchaser.

If a seller affirms that his horse is of a certain value, it is deemed to be the purchaser's own folly if he believes him, and it turns out to be untrue; besides, value consists in judgment and estimation, in which many men differ.

As sales by auction have gradually advanced in public estimation, so likewise the number of competitors for public favour have increased, and sales of horses by auction are to be found in all parts of the metropolis, from the aristocratic yard of the Messrs. Tattersall at Hyde Park Corner to the humble yet useful establishment of Mr. Dixon in the Barbican, not forgetting the princely Bazaar of Mr. George Young in King-street, Portman-square.

As all these establishments are conducted pretty much on the same principle, and the conditions of sale are nearly, if not exactly, the same, I shall only insert those of Messrs. Tattersall and Mr. Young.

## CONDITIONS

*Of every Sale by Auction and Private Contract at Hyde Park Corner.*

1. The highest bidder to be the purchaser; and if any dispute arise between any two or more bidders, the lot so disputed shall be immediately put up again, and re-sold.
2. No person to advance less than 5s.; above 5l. 10s., and so on in proportion.
3. The purchasers to give in their names and place of abode (if required), and to pay down five shillings in the pound (if required), as earnest and in part payment; in default of which the lot so purchased may be immediately put up again and re-sold, if the auctioneer shall think fit.
4. The lots to be taken away within one day after the sale is ended at the buyer's expense, and the remainder of the purchase money to be absolutely paid before the delivery of the lot.
5. Upon failure of complying with the above conditions, the money deposited in part of payment shall be forfeited to the owner of the lot, he paying thereout all just expenses;

and the lot shall be re-sold by public auction or private sale, and the deficiency (if any) attending such re-sale shall be immediately made good by the defaulter at this sale.

6. If any person shall purchase a lot, and not pay for it in the time limited by the 4th condition, nothing contained in the 5th condition shall prevent the auctioneer or owner of the lot from compelling the purchaser to pay for it, if the auctioneer or seller shall think fit.

7. The vendor shall be entitled to receive the purchase money of each lot not warranted sound on the third day from the sale day; and all horses sold as sound on the Monday shall be paid for on the Friday; and all horses sold as sound on the Thursday shall be paid for on the Tuesday, provided the auctioneer shall have received the purchase money, or delivered the lot out of his custody, but not before.

8. The purchaser of any lot warranted sound, who shall conceive the same to be unsound, shall return the same on or before the evening of the second day from the sale: otherwise the same shall be deemed sound, and the

purchaser obliged to keep the lot with all faults.

9. The King's Tax shall be paid by the seller.

10. All horses and carriages, &c. brought to this Repository for sale, and sold by private contract, either by Messrs. Tattersall or the owner, or any one acting as the agent for the owner of such horses, carriages, &c. shall pay the usual commission; and no person shall have a right to take away his horses, carriages, &c. until the commission, keep, or other expenses are paid, whether the same have been sold by public auction or private contract, or are not sold.

11. All horses, carriages, &c. advertised by Messrs. Tattersall (though not upon the premises at the time of sale), either by private contract or public auction, shall pay the usual commission.

Lastly. The conditions of sale are—

If sold by public auction, 2s. in the pound.

If by private contract, 1s. in the pound.

And if not sold, 3s. for putting up.

N. B. No money paid without a written order.

The Monday sales continue throughout the year, and at particular times (generally about the height

of the London season) there is also a sale on Thursdays; though this day, except for large and well-known studs, does not answer so well.

For the Monday's sale it is necessary that the horses should be sent on the preceding Friday, or Saturday morning at latest, for the catalogues are printed on the latter day: and at the time of sending, the horses must be entered in the book kept in the office for that purpose at the right hand side of the yard, and such pedigree or other description given as the owner wishes to have inserted in the catalogue.

The casual observer would consider one stable as good as another; but persons acquainted with the yard say, that at Messrs. Tattersall's (where the company for the most part consists of fashionable men who seldom rise till noon) it is a matter of no small importance to secure a favorable position in the list.

The second seven-stall stable I believe is considered a fair one, but the favorites are the twelve and eight-stalled ones.

Horses in the second seven-stall stable come out about three o'clock in the afternoon, the first lot in it generally being between thirty or forty in the catalogue (depending upon whether the horses in boxes are brought out first or not): then comes

the twelve, and after it the eight-stall stable, which brings the day on to about four o'clock in the afternoon, when there is generally the fullest attendance in the yard.

All people, however, cannot get their horses into these stables; and such as cannot had better put them either into the large stable, the back fourteen-stall, or the boxes. The great thing to avoid is, having the horses brought out before the buyers arrive.

The best way is to bespeak stalls, and rather to defer sending the horses for a week or two sooner than have them put into bad stables.

For the Thursday's sale they should be sent in on the Tuesday: but for whichever day stalls are engaged, care must be taken that the horses are sent in on those I have named, otherwise it will be presumed that they are not coming, and the stalls given up to some one else.

All that has been here said respecting sales by auction at Messrs. Tattersall's Repository, is equally applicable to those at Mr. Young's Bazaar, except so far as the same may be altered by the printed conditions of sale, and by which all persons are bound.

At Mr. Young's there is a greater quantity of stabling, and horses need not to be sent in until the

day preceding the sale: for instance, a horse sent there on a Friday morning will be in time for the Saturday's sale, though an earlier day might secure a better place in the catalogue.

The Bazaar itself is of immense extent, and admirably arranged; of which perhaps I cannot give a better description than by inserting one of the prospectuses.

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BAZAAR,

*King Street, and Baker Street, Portman Square,*

FOR THE SALE OF HORSES, CARRIAGES, AND FURNITURE, BY COMMISSION.

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For Horses and Carriages by Auction every *Tuesday* and *Saturday;* and for Saddlery, Harness, and Miscellaneous Articles, *daily.*

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*Regulations for the Sale of Horses by Commission.*

George Young humbly begs leave to submit the following Regulations for the Sale of Horses by commission in this establishment, which covers upwards of two acres of ground, and contains

early four hundred stalls, and good exercising grounds, all inclosed by high walls.

1. Horses will be taken in for sale every day (Sundays excepted), from nine o'clock in the morning until eight in the evening during summer, and until dark in the winter, after having passed the examination of the Veterinary Surgeon, in order to guard against the introduction of contagious disease.
2. The premises will be open for general business only during these hours, within which horses may be tried or taken away.
3. A commission of 5 per cent. will be charged on the amount of all sales.
4. The price for forage, &c. will be that ordinarily charged in the same neighbourhood from time to time, and each horse will have an hour's walking exercise every day.
5. Horses sent as carriage horses may be seen in harness, and tried a short distance *out* of the Bazaar; but saddle horses will not be allowed to go out, unless by the express permission of the owner, as the space within is sufficiently extensive and convenient for trial and exercise.

6. Studs of horses will be received with their grooms; but such grooms must, *if required*, comply with the regulations laid down for the servants of the Bazaar.

7. An able veterinary surgeon, assistants, and smiths, will be constantly looking over the stables; careful, experienced head grooms and stablemen selected; and a watchman kept up all night, to guard as much possible against accidents, particularly those arising from horses getting cast in their stalls.

8. Great attention will be paid to horses' feet, which is of the utmost importance while they are out of work.

9. All horses purchased must be paid for previously to delivery; and persons failing to make payment within two days after the purchase will become liable either to an action at law by the owner, or to a dissolution of the contract, at his (the owner's) option.

10. Should any horse be warranted and prove unsound, he must be returned within the second day after the sale (not including the day of sale), and within the prescribed hours of that day. It must, however, be

distinctly understood, that this period only applies to George Young's liability, the law being open against the owners after that date, as in all other cases of warranty, and that all liability on the part of the agent will cease at the period he binds himself to pay over the amount of sales to the owners.

11. In all disputes which may arise respecting purchases and sales, where the law leaves it at the option of the parties either to bring or defend actions in the name of the agents or the principals, no action will be brought or defended by the agent, or in his name; but the action and defence must be brought and made by the parties themselves, and in their own names; thereby leaving the agent, what he ought to be in the transaction, the witness, to prove the facts in dispute.

12. When a horse, having been warranted sound, shall be returned within the prescribed period on account of unsoundness, a certificate from a veterinary surgeon, particularly describing the unsoundness, must accompany the horse so returned; when, if it be agreed to by the veterinary sur-

geon of the establishment, the amount received for the horse shall be immediately paid back; but if the veterinary surgeon of the establishment should not confirm the certificate, then, in order to avoid farther dispute, one of the veterinary surgeons of the College shall be called in, and his decision shall be final; and the expense of such umpire shall be borne by the party in error.

13. If any horse, warranted quiet in harness or quiet to ride, or warranted in any other respect (except as to soundness), shall be returned within the prescribed period, as not answering the warranty given with him at the time of sale, he shall be tried and examined within the Bazaar by an impartial person, approved of by George Young, whose decision shall be final; and the consideration for the examination, viz. 10s., shall be paid by the party in error.

14. The proprietors of horses sold may receive the amount of sales (if received from the purchasers), deducting for keep, commission, &c. on the fourth day after the sale; but no liability is to attach to George Young, in the event either of an offer or an agree-

ment to purchase not being subsequently carried into effect.

15. The keep, &c. &c. of horses that may be taken away unsold must be paid for before delivery.

16. When the keep and other expenses upon any horses sent in for sale shall amount to a larger sum, with reference to their value, than George Young should deem expedient, he shall, at the expiration of ten days after the sending of a written notice to the owner or owners, addressed by post, agreeably to the register made at the time the horse or horses were sent in for sale, be at liberty to sell and dispose of the same, either by public or private contract, placing the proceeds to the credit of the parties, and paying over to them the balance, if any remain, after deducting all charges for keep, commission on sale, &c. &c.

17. George Young will not deal in horses, either directly or indirectly, but will conduct himself most strictly as an agent; nor will any servant be allowed to deal, or to ask for any perquisite.

18. No charge for advertisements will be made

for any horse or stud, except especially directed to be advertised.

19. All risk from fire, &c. will attach to the owners of the horses.

*Regulations for the Sale of Horses by Auction.*

1. A sale by auction will take place every Tuesday and Saturday, and will commence precisely at twelve o'clock at noon.
2. The charges for commission will be five per cent.
3. Catalogues will be made out every Monday and Friday, describing such horses as are to be put up for sale, together with the number which may be affixed to each horse on his entering the Bazaar, and the numerical order in which he will be brought out for sale.
4. The description of the horses given in the catalogue will be the only one by which the horses are put up *for sale by auction*; it will therefore have no reference whatever to that on the tin *(which relates only to the horse on sale by commission)*; and every horse intended for sale by auction must be in the Bazaar at least one day before the

day of sale, in order to be inserted in the catalogue of the next day's sale.

5. A deposit of 10*l.* per cent. must, if demanded, be paid on each lot at the time of purchase, and the remainder before delivery on the same day; but should the purchase-money not be made good during the day, the deposit will be forfeited, leaving the owner at liberty to dissolve the contract, or to re-sell the horse, either privately or by auction, with or without giving notice to the purchaser, who will be debtor to the owner for any difference or loss which may arise out of the non-fulfilment of the contract, including commission on the re-sale, keep, and all other charges whatever.

6. See Clause 10 of the "Regulations for Sale by Commission."

7. See Clause 11.

8. See Clause 12.

9. See Clause 13.

10. See Clause 14.

11. Three shillings will be charged on each horse put up for sale by auction, for advertisements, catalogues, &c., but an additional charge will be made if specially advertised.

12. The keep, &c. &c. of horses taken away unsold must be paid for before delivery.

13. The price of forage will be the same as may from time to time be charged in the Bazaar for horses sold on commission. The care, attention, feeding, and exercise, will also be the same.

14. Should any dispute arise at the sale between the bidders, the lot on which such dispute shall arise will be put up again.

15. No bidding less than 10*s.* 6*d.* on sums under fifty guineas, nor less than one guinea on sums above fifty guineas, will be accepted, and the highest bidder will be the purchaser.

16. All risk from fire, &c. will attach to the owners of the horses.

17. See Clause 16 of the "Regulations for Sale by Commission."

*** Stock will be valued or sold by auction, on the premises of the owners, upon moderate terms.

*Money Advanced on Horses on the following Conditions.*

1. That the amount of loans made shall be in proportion to the value of the horses, sub-

ject to George Young's determination; and that the interest on the same shall commence at the rate of 5*l.* per cent. per annum on the day on which the money is advanced.

2. That if the amount borrowed be not repaid, together with all the ordinary charges for interest, keep, &c. &c. within the period inserted in the receipt given to the borrower at the time of his depositing the horse or horses upon which the loan is made, George Young shall then be at liberty, with or without notice, to sell and dispose of such horse or horses, either by public auction or by private sale, and to place the proceeds at the credit of the account of the party borrowing; when, after charging the same with 5*l.* per cent. commission on the sale, interest at the rate of 5*l.* per cent. per annum, and the other accustomed charges, he shall pay over the balance, if any remain, in favour of the borrower.
3. That if, on the contrary, any balance should remain due to George Young, the same must be immediately paid to him on demand; or in default thereof, that interest thereon shall commence at the rate of 5*l.*

per cent. per annum, from the day of sale, on which day the balance will be considered due to George Young.

4. That the horses upon which money is so advanced shall in no case be taken out of the Bazaar, until the amount of the loan, with interest, be paid, as well as the keep, and all other charges upon them, up to the day of removal.

George Young takes leave finally to add, that, as the horses are kept in the best possible condition at a very great expense in procuring forage of the first quality, and in employing the best veterinary aid and the most careful grooms, additional advantages are offered to the public; which will, he trusts, ensure him the high reputation (which it shall ever be his earnest endeavour to maintain) of his establishment being the fairest, the safest, and the most extensive market for the purchase and sale of horses. In support of these observations, he begs particularly to refer to Clauses 3, 7, 12, and 13, of "Regulations for the Sale of Horses by Commission," and to state generally, that the whole of the foregoing regulations have been framed with the greatest care, and the most anxious desire to prevent legal disputes, and to avoid the great expense usually attendant upon them, as well

as to render the strictest justice, by affording equal protection both to the buyers and the sellers.

For the sale of carriages and furniture by commission and by auction, and of saddlery and harness, &c., see also printed Regulations.

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The horse department is more a place for sale by commission or private contract than by public auction; and there are always a great number of useful horses to be found, the price of which, and other particulars, can be ascertained by referring from the number of the stall to a list exhibited in each stable.

With respect to the instructions given to the auctioneers as to the price for which they are to sell a horse, a very nice distinction has been made; viz.

That an action does not lie against an auctioneer for selling a horse at the highest price bid for him, contrary to the owner's express directions not to let him go under a larger sum named.

Though it would had the seller desired the auctioneer to put the horse up at a certain sum, say 100l.

This is the law, which it is as well to know; though, to give the auctioneers all due credit, I believe they are much too careful of the property

entrusted to their disposal to make it likely to occur again.

However, the case was tried in an action of *Bexwell* against *Christie;* speaking of which Mr. Espinasse, in his *Treatise on the Law of Nisi Prius,* says—

"It was resolved in this case that when a person sends an article to an auction *which advertizes to sell to the highest bidder,* with orders not to have it sold under such a price, an action will not lie against the auctioneer if he sells it at a price less than that so mentioned, as such dealings are a fraud on buyers, who suppose the lot is to be knocked down to the best *real bidder;* but it is otherwise had he ordered it not to be set up under such a price."

If the owner does not object to selling his horse by private contract, he can state the price at the time of entering him in the auctioneer's books; and as by this means the five pounds per cent. auction duty will be saved, he may perhaps diminish the price in proportion; he can also state whether he purports warranting him or not.

The horse, whether sold at Messrs. Tattersall's, Mr. Young's, or elsewhere, being duly entered, comes to the hammer according to his number in the list; when, if the owner wishes to warrant

him, he must tell the auctioneer, if he has not already done so on entering him.

The best way of doing this (and also of giving any farther instructions) is by writing, and handing them to the auctioneer when it comes to the horse's turn—for a short lapse of time takes place between the putting up of each lot; he then has an opportunity of reading them: but the writer must bear in mind that

"Brevity is the soul of wit."

The difference between the number of horses sold at the hammer under warranty, in proportion to those that are sold without, is so very great, that, at Messrs. Tattersall's particularly, warranty is the exception and not the general rule; consequently they never insert in the catalogues whether the horses to be sold are warranted or not; and unless Messrs. Tattersall state that they are to be warranted, the inference is that the owner does not intend they should, and that the purchaser is to take them at all risks and with all faults.

When the horse comes to the hammer, the auctioneer reads from the catalogue or written instructions what the owner has to say respecting it; as for instance—

"This, Gentlemen, is Lot 49—a chesnut mare by Windle; dam Minerva by Walnut; grandam

Sister to Beningbrough by King Fergus: she is seven years old and warranted sound, and has been regularly hunted with His Majesty's stag-hounds during the last season. Will any Gentleman give two hundred guineas for her? One hundred and eighty guineas? One hundred and fifty guineas?"

And so he goes down to, and sometimes below, the price which the horse is to be sold for. If he gets below the sum, and there is no bidding, he perhaps assumes one, and endeavours to work it up to, or past, the lowest price fixed; and a person not knowing this might fancy he had sold his horse, while in fact the auctioneer has only been bidding against himself.

This manner of conducting sales is a mixture of a Dutch auction and an English one.

A Dutch auction is when the thing is put up at a high price, and if nobody accept the offer a lower is named; and so the sum first required is gradually decreased till some person close with the offer. Thus there is of necessity only one bidding —a mode which in this country would attract few bidders.

Messrs. Tattarsall's sale commences in the same manner as a Dutch auction; but when any person actually bids, then others may advance on that

bidding, and the highest bidder is declared the purchaser, just as if the sale had been conducted in the usual way.

A good deal of difference of opinion has existed respecting the owner's right to bid for his horse at the hammer.

The case I before mentioned, of *Bexwell* against *Christie,* turned upon the fact of the horse being *advertised* to be sold to the *highest bidder,* and the Judges refused to view the seller in the light of a bidder at all, though the Legislature, in subsequent statutes, seems to have been of a different opinion, and even to have sanctioned such proceedings.

In the case of *Howard* against *Castle,* when the purchaser was the only real bidder, Lord Kenyon held, that, unless it were publicly known that the owner intended to bid, it was a fraud upon the purchaser, and consequently no action would lie against him for non-performance of his agreement.

Lord Rosslyn, in a subsequent case of *Conolly* against *Parsons,* said he fancied the case of *Howard* and *Castle* turned on the circumstance that there was only one real bidder, and the person refused instantly, and his Lordship said—

"He felt vast difficulty to compass the reasoning that a person does not follow his own judg-

ment because other persons bid, that the judgment of one person is to be deluded and influenced by the judgment of others."

Upon the whole, however, it seems to be clearly settled that a sale cannot be supported where the purchaser was the only real bidder, and public notice was not given of the owner's intention to bid; but that public notice is not essential to the validity of a sale if there be a contest between real bidders *after the biddings on the part of the owner have ceased.* And it is conceived, that if there were real bidders at the sale it would be supported, although the bidding immediately preceding that of the purchaser was fictitious.

Where public notice has been given, the sale will be binding on the purchaser although there was no contest between real bidders, but only the purchaser and the person employed to bid bid against each other. If, however, the particulars, or advertisement, or even the auctioneer, state (as is frequently the case) that the horse is to be sold *without reserve,* it seems clear that the sale would be void against the purchaser if any person were employed as a puffer and actually bid at the sale.

I cannot say that I agree with Lord Rosslyn, that the bidding of one man has not its influence on the conduct of another.

If I see a person who I know to be a good judge of a horse examining one particularly, and I afterwards find him bidding for the horse at the hammer, I naturally conclude that he is worth looking after, and I perhaps bid a few pounds more than I otherwise intended merely on the strength of this circumstance: though I admit that this sort of influence is more predominant at horse sales than sales where the object of competition may be land, houses, or other goods, with which all persons are more or less conversant, and have better opportunities of becoming acquainted with the particulars.

We will now proceed to consider the horse as having been at the hammer, and either sold to a real purchaser, or bought in by the auctioneer or the owner's bidding.

If sold to a purchaser, the clause No. 3 of Messrs. Tattersall's, and No. 5 of Mr. Young's conditions, may be enforced if the auctioneer is unacquainted with the party, else he enters his name in the book as the purchaser; and on going to the office and paying the money he receives an order in this form —Deliver lot 49—which enables him to take the horse away immediately.

The price to be paid is the price bid at the hammer (for instance, one hundred guineas for one

hundred guineas bid, the biddings being in guineas), the seller paying the auction duty, commission, and whatever is due for the horse's keep.

The seller is done for the day; and, on the day mentioned in the seventh of Messrs. Tattersall's and fourteenth of Mr. Young's conditions of sale, may either go himself or send a person with a written order to receive the money, which will be paid, deducting five pounds per cent. for auction duty, five pounds per cent. for commission, and three shillings and sixpence a night for the horse's keep.

The owner, however, need not despair of selling his horse because he sees him return from the hammer without having reached the price he is put in at.

The dealers in the yards are very sagacious and inquisitive, and soon learn what horses are really for sale, and what are merely sent in to assist in the selling of others; and it not unfrequently happens that they make overtures through the grooms for the purchase of the horse before he goes up to the hammer.

As they will take care not to offer what they know the horse to be worth, should there be other purchasers in the yard, I believe the mode most recommended is to let the horse take his turn at the hammer, and run the chance of meeting with a

person who wants a horse for use, and who can afford to give more than a dealer, who calculates the profit to be realised on a re-sale, and not the services of the animal.

It not unfrequently happens that dealers are sent to purchase horses for gentlemen. These are what are called guinea-men—their nominal fee being a guinea on each purchase; but the real one is just what they can manage to make by the bargain.

These men are a great nuisance, inasmuch as they prevent gentlemen dealing together; and they have a most peculiar knack of depreciating the value of a horse in the hands of a seller, and extolling the same to a purchaser.

Dealers should always be the *dernier ressort;* and there are very few horses that are not worth a something to some one of the trade; but the seller must exercise his own discretion, regulated by the properties of the animal to whom he offers it.

Mere hacks are easily disposed of to dealers, especially those about or above fifteen hands and a half high; but a man would not take a hunter to Mr. Dixon's, in the Barbican, any more than he would a thorough-bred horse to Mr. Morris's, in St. Martin's-lane.

These public sales are the central point for dealers; and if one of them has bid for a horse at

the hammer, he is always sure to come to the owner afterwards to treat for him.

Where they have a purchaser in view, some of them will treat very fairly; but there is nothing like relying upon Mr. Taplin's advice, and dealing with an honest man as one would with a rogue; and there is no fear of their forgetting to remind the seller that by disposing of his horse by private contract he will save the five per cent. auction duty.

This will enable the owner to sell the horse a few pounds cheaper; and most people, when they are dissatisfied with their horses, will sooner part with them at almost any price than keep them; and to such this may be a convenient mode: but I advise them on no account whatever to warrant a horse to a dealer.

The want of it will not affect its value at all; because dealers are far too sharp to be imposed upon by gentlemen; and if a horse has any injury or infirmity about him, they will not fail to discover and point it out, and also rely upon it for a reduction of price: and even if he is perfectly sound, there are some who would not scruple to make him otherwise, and return him on the breach of warranty if they found he did not answer their purpose.

If the bargain be closed with a dealer or any

other person, the seller must go to the office and transfer the horse into the name of the purchaser; and on sending to the office, in like manner as on a sale by auction, he will receive his money, deducting the commission of five per cent. and the expenses as before mentioned.

The paying the agent five per cent. for doing what the owner has done himself may appear an anomaly; but the fact is, that the charge is made for guarantying the payment of the money, and not for the mere trouble of offering the horse for sale.

Should the horse not be sold either at the hammer or by contract, a charge of three shillings is made for putting him up.

I have already stated that it is not the usual custom on sales by auction to warrant the horses sound.

Looking through any of Messrs. Tattersall or Mr. Young's lists, it will be seen that the description of their qualifications are frequently given in this manner—

"A grey gelding, quiet to ride and quiet in harness:"—"a black pony, rides and draws:"—or, "a brown gelding, a good roadster and been in harness."

These I consider to be an assurance that the horses will do what is specified; and therefore, if I

buy a horse with the description of the grey gelding, and find that he either is not quiet to ride, or will not go in harness, I am entitled to return him on the breach of that warranty within the period specified in the condition.

By Messrs. Tattersall's eighth condition of sale it will be seen that the purchaser of any lot warranted sound, who shall conceive the same to be unsound, shall return the horse on or before the evening of the second day from the sale, otherwise he is to be deemed sound, and the purchaser obliged to keep the lot with all faults.

Thus, therefore, if I purchase a horse on Monday's sale under a warranty of soundness, of course I use all expedition in ascertaining the correctness of it; and, if I find any thing the matter with the horse, I return him on or before the Wednesday evening: and so, on a Thursday's sale, I return him on or before the Saturday evening.

Messrs. Tattersall's conditions do not mention any warranty other than that of soundness; but I consider that, if the horse does not answer the warranty as to riding or drawing quietly, he is equally returnable at the time mentioned in the eighth condition.

Mr. Young is more specific in his conditions, and No. 13 is made especially to meet the case.

## CHAP. VI.

We will now consider the case of a horse which has been sold by auction under a warranty of soundness.

Although by the conditions of sale the purchaser is bound to return the horse if not found to answer the warranty by a certain day from the sale, after which he is held to be retained, at the risk of the buyer, as to all after-accidents; yet it does not follow, because he has not been able to discover a latent defect or infirmity within such period, that he is not to be allowed to return a horse as unsound which will perhaps be useless in a week.

As Lord Loughborough said, in the before-mentioned case of *Fielder* against *Starkin*—

"*No length of time elapsed after a sale will alter the nature of a contract originally false.*"

And by what code of reasoning shall we adopt this doctrine with respect to sales by private con-

tract, and reject it as applicable to sales by public auction?

It is, therefore, clear that the buyer can return a horse bought under a warranty of soundness at a public auction at any reasonable, not to say indefinite period, provided he can prove the existence of disease or lameness at the time the purchase was made.

Were this principle not admitted, the word warranty would become a mere dead letter as applied to sales by public auction, and little or no distinction would exist between a horse purchased with or without one; for though the generality of disorders or infirmities are such as are apparent to the general observer (at least can always be discovered before the expiration of the time allowed for trial), yet not even a professional man can be certain of the non-existence of latent disease.

It is, therefore, clear that the same law which appertains to warranty on sales by private contract is equally applicable to warranty made on sales by public auction.

With respect to the age of a horse sold by public auction, it has been held that where a horse was warranted six years old and sound (and one of the conditions of sale was that the

purchaser of any warranted horse, who should conceive the same to be unsound, should return him within two days, otherwise he should be deemed sound), the vendor was liable to have him returned after the expiration of the second day, should he prove more than the age specified.

This was in a case of *Buchanan* against *Parnshaw*, and Lord Kenyon said—

"The question turns upon the meaning of this condition of sale, and I am of opinion that it must be confined solely to the circumstance of *soundness*.

"There is good sense in making such a condition at public sales, because, notwithstanding all the care that can be taken, many accidents may happen to the horse between the time of sale and the time when he may be returned, if no time were limited; but the circumstance of age is not open to the same difficulty."

### AUCTIONEERS.

The conditions of sale being publicly exhibited, either on the auctioneer's box or in the office, but generally in both, it is presumed that all persons attending the sale are conversant with the terms upon which business is transacted, and the law implies a tacit consent on their parts to conform

to these terms; and Lord Kenyon said, in a case of *Mesnard* against *Aldridge* the auctioneer, where Mesnard brought the action on Aldridge refusing to receive a horse as unsound after the lapse of a second day, that the action could not be supported, and the plaintiff was nonsuited.

All the further law which it seems necessary for our purpose to know respecting auctioneers is, that they are liable to the seller for the amount of his goods, if he lets them out of his possession without receiving the price of them from the purchaser, which was laid down in an action of *Brown* against *Staton*.

Auctioneers have long been the privileged dealers in flowery metaphors and exaggerated descriptions, but the thing is now carried to such a height as to call loudly for the interference of the Legislature.

We have all heard of the advertisements of an estate for sale commanding an extensive view over hill and dale, having the landscape varied by a beautiful "hanging wood," and which, on the purchaser's taking possession of the house, proved to be a gallows.

This may be a true story or not; but I can vouch for the truth of a person having been induced to bid ten thousand pounds for an estate,

merely because the auctioneer stated it to be worth twenty thousand pounds; and when it was knocked down to him, he said he only bid to give the thing a start, and the actual value was only four thousand pounds.

Whatever an auctioneer states verbally, relative to the value or advantages of an estate, or anything else, I think should be looked upon as mere verbiage, but I would confine them within some bounds in their printed descriptions.

Formerly it was a proof of the truth of any thing, however improbable, if it were in print. Allegory itself became real the moment it came forth in type, and a mere supposition in manuscript issued with the dignity of history from the press.

The March of Intellect has in a manner superseded this doctrine: but there are still many persons who pin their faith to the printer, and are deceived by the specious advertisements of the auctioneers.

It is not of their verbal or printed puffs that I complain so much, as of the statements they make with the appearance of truth.

For instance: at a sale of pictures, if I see one stated in the catalogue to be by Vandyke, I may fairly suppose it to be the production of that

painter; and yet it appears, by some evidence given in the Court of Chancery very lately, in a cause of *Huygh* v. *Gray*, that among picture-dealers the mere adding the name of an artist is only considered to imply that the picture is a copy from one of his, but that the word "warranted" conveyed an assurance that the picture was an original by the master specified.

The same way with horses. Some auctioneers do not hesitate to insert in their catalogue, as excellent or superior hunters, horses which have never been in the field, or to give any other description equally fallacious.

Others again insert horses in their catalogue as the property of persons to whom they never belonged.

An action was tried very lately at Oxford, where this had been done. It was brought by *Mr. Taunton*, a solicitor, against *Adams*, an auctioneer. The circumstances of the case were these:—

The defendant, an auctioneer at Oxford, was employed by Mr. Sadler, a well-known livery-stable keeper there, to dispose of his stud of horses by auction, as he was about to retire from business. The plaintiff attended the sale, and the defendant having represented all the horses as the genuine property of Mr. Sadler, he was induced to bid for one of them, a bay gelding, and became the pur-

chaser of it at forty-one guineas. A day or two after he had got the animal home, he discovered that it was lame; and on making inquiries, ascertained that it had never, in fact, belonged to Mr. Sadler, but was the property of his brother-in-law, a Mr. Beechy, for whom it had been introduced into the sale along with Mr. Sadler's horses. The lameness was pronounced to be of such a description as to be incurable; and the plaintiff therefore brought the present action, by which he sought to recover back the money he had paid for the horse, together with the sum it had cost him for its keep, and the veterinary surgeon's bill, amounting altogether to sixty-two pounds thirteen shillings.

Mr. Taunton and Mr. Chilton conducted the plaintiff's case. The foregoing facts having been given in evidence—

Mr. Serjeant Russell (with whom was Mr. Talfourd) addressed the Jury for the defendant. The Learned Serjeant, after submitting that the action was not maintainable, went on to contend that no deceit had been practised by the defendant; nothing, he observed, was more common in sales by auction than to have some goods of another person put into the catalogue.

Mr. Justice Bosanquet: And perhaps nothing can be more improper.

Mr. Serjeant Russell: The horses which the de-

fendant had sold were represented as belonging to a livery-stable keeper at Oxford—a place, as admitted by Mr. Sadler himself, most unlikely to find a good horse in; for they were generally ridden by young gentlemen of the University, who had only one pace, and that was as hard as they could go. The plaintiff had hoped to get a good bargain, and it had turned out a bad one; but the defendant had practised no deceit, and made no wilful misrepresentation.

Mr. J. Bosanquet left it to the Jury to say whether or not there had been such a misrepresentation by the defendant as induced the plaintiff to bid more for the horse than he would otherwise have done. If they thought that there was, they would find for the plaintiff for such sum as they thought he would have given less than the forty-one guineas which he bid under the defendant's representation.

The Jury found for the plaintiff—damages twenty-eight pounds.

With respect to the best place for disposing of horses, I believe it is generally considered that a real good one is more likely to meet with a purchaser at Messrs. Tattersall's than at any other Repository, this being the resort of sportsmen and gentlemen of fortune from all parts of the kingdom; and that sometimes an indifferent horse

will bring a large price if the owner is known—many people being kind enough to attach to the horse what is in reality the attribute of the rider; but for selling middling-priced horses, Mr. Young's Bazaar, by uniting the properties of a good livery-stable, with the advantages of a weekly auction on the spot, and the opportunity of selling by private contract every day, possesses advantages which Messrs. Tattersall's Repository does not.

The extent of Messrs. T.'s stables not being equal to the number of horses sent, the owner of one who fails to sell him on the Monday cannot rely upon being able to keep him there until the following Monday, or even the Thursday's sale; but the immense range of stabling at the Bazaar renders any difficulty of this sort very unlikely to happen. At either place the men in the yard will pay every attention to horses who have not grooms sent with them.

As to purchasers at sales by public auction, I believe a buyer with a fair knowledge of horses is considered to be in a much better situation than any seller; but for a person to go to an auction without any ideas on the subject, or previous acquaintance with the horses, and thinking every person blind except himself, is the height of absurdity.

Many of the owners of horses sent to public auctions are persons whom fortune has placed in such a situation that the difference of price obtained by selling their horses with warranties and without them is of no importance, and many would prefer giving them away to running the risk of having them returned at a subsequent period as unsound.

Mr. Richard Wilson (a gentleman well known both in the legal and sporting world), at his annual sales, expressly states in the catalogue, that "no warranty is given;" and the Earl of Jersey and many other Noblemen and Gentlemen adopt the same rule.

It must not, however, be supposed that because these persons apparently carry things with a high hand that they part with valuable horses without receiving a fair consideration.

Doubtless a great number of good horses are sent or put into auction with which the owners have no objection to part provided they obtain their price; but the number of horses really for sale at a reasonable price bear a very small proportion to the number which are only to be sold on exorbitant terms.

Noblemen as well as commoners, and rich men

as well as poor, frequently have bad horses, and then what are they to do with them?

To sell them to their friends would not add much to their character and respectability; and to hawk them among strangers would be beneath their dignity: consequently, at certain times of the year, the owner and stud-groom make their selection of all faulty horses, and either have an auction on the premises, or send them off to a public repository, accompanied perhaps by three or four of the best ones in the stable to add weight and importance to the stud.

This is what they call "weeding" the stable, and a very proper term it is too; and horses drafted in this manner form no inconsiderable portion of the valuable studs of Noblemen and Gentlemen which are sold at repositories and elsewhere.

All horses belonging to men of fortune have names, some both christian and surnames, which are always speciously inserted in the catalogue, though perhaps only christened on coming into the yard, but the grooms think it gives them an air of consequence; therefore we find the Marquis, Sir Harry, Mary Ann, Mountaineer by Pioneer, and no end of pedigrees.

Supposing Mary Ann (speaking in the language

of the stable) to be a decided screw, the groom will very likely arrange the horses so as to bring the Marquis and Sir Harry (both excellent horses) out first, and after letting them be offered at all prices from three hundred guineas down to thirty, and perhaps bought in at forty, Mary Ann will make her appearance, and after being put up at one or two hundred guineas, will run back in the Dutch fashion to thirty-five guineas, or perhaps less.

Well, some innocent bystander may think her very cheap, or perhaps will bid *for fun*, never dreaming that a two hundred guineas mare like Mary Ann, with such a pedigree, and "the property of a Nobleman," will be sold at any thing under that price; or he may think to give the thing a fillip by offering the last sum named, thirty guineas, and is not a little astonished when the auctioneers knock her down to his bidding, perhaps complimenting him at the same time by saying that she is "given away."

The pleasing delusion and a "pretty horse" will most likely be all he will get for his money; for, ten to one, on taking his purchase away, he will discover that she is either broken winded, or just about to lose her eye sight, or has some other valuable quality.

It is the case (though it will not avail him much to know it when once the fatal blow is struck) that his bidding may be retracted at any time before the lot is actually knocked down (unless the conditions expressly stipulate against it), because the assent of both parties is necessary to make the contract binding, which is signified on the part of the seller by knocking down the hammer.

Therefore it behoves the bidder to make the best use of the few moments allowed him, and if he thinks he has done a foolish act, let him remember that the next most foolish thing he can do is to persist in it: so let him say, "I retract my bidding" before the hammer is down, and the bystanders will think him a much more sensible man than if he allowed a useless horse to be forced upon him.

The studs of Noblemen and Gentlemen "giving up hunting," I believe, are not considered quite so dangerous to speculate in as those "the property of Noblemen:" for this reason, that it is generally known what hounds are given up; and hence the truth of the statement is more easily ascertained.

"But here," as a Gentleman said when looking at a horse a friend had just purchased out of a Nobleman's stud which was sold under these circumstances—

" I dare say your horse is very cheap; but it does not follow that because my Lord —— has given up hunting that his friends have done the same; and you may depend upon it they would not let good horses go for nothing at the hammer."

This is a very true observation, and not a bad one to bear in mind when attending sales of this description.

Altogether I believe it is generally allowed by persons conversant with horse-dealing, that those who know nothing about horses, if they must purchase their knowledge, had better buy it at the cheapest rate; and that sales by private contract, where a reasonable trial is allowed, afford much better opportunities of becoming acquainted with the necessary requisites for a good horse, than those by public auction, where the place of trial and inspection is a small and crowded yard.

In conclusion, I may state, that these pages were not written for the benefit of persons who consider all sorts of knavery and deception in horse-dealing not only allowable but commendable; but they were written for the protection of inexperienced men, who daily fall into the snares of the artful and designing: and though, from the paucity of established authorities, I have not been able to enter so fully upon the subject as it

requires; yet if what I have written should tend to guard the unwary against fraud, my purpose is fully answered.

So now, like my superiors on the Bench, having gone through what evidence there is, I shall sum up with the opinion of Lord Ellenborough—

"*That any infirmity which renders a horse less fit for present service, or any malady which renders him less serviceable for a permanency, are unsoundness:*"

And the *dicta* of Lord Loughborough—

"*That no length of time elapsed after a sale will alter the nature of a contract originally false:*"—

And finish by saying (though contrary to my own interest), that I advise no man to go to law who can avoid it; yet sooner than be made the dupe of designing blacklegs, I would run the risk; and the result of my own experience has been, that (rather than appear as a defendant in a Court of Justice) a horse-dealer will submit to almost any terms, unless indeed he feels himself fortified with the

MENS CONSCIA RECTI.

# ADDENDA.

## THE ROYAL VETERINARY COLLEGE.

I CANNOT omit mentioning an establishment that I subscribe to, but which is by no means so generally known as its public utility and national importance entitles it to be:

I mean the ROYAL VETERINARY COLLEGE at Camden Town, in Middlesex.

The prospectus states—

That the extreme ignorance and incompetency of the greater part of the practitioners on the diseases of horses, called farriers, had been long and universally complained of. To remedy which, and meet the evil in the most effectual manner, several Gentlemen formed themselves into a Society for the Improvement of the Veterinary Art. A large piece of ground was provided, and a range of stables, a forge, a theatre for dissection and lectures, and other buildings were erected, at a considerable expense. A medical gentleman of superior abilities was appointed Professor;

and other officers requisite to give due effect to the Establishment were fixed at the College, at an expense large in the aggregate, but at salaries not individually greater than were consonant to the strictest rules of economy.

That the grand object of the Institution has been, and is, to form a School of Veterinary Science, in which the anatomical structure of quadrupeds of all kinds, horses, cattle, sheep, dogs, &c., the diseases to which they are subject, and the remedies proper to be applied, may be investigated, and regularly taught; in order that, by this means, enlightened practitioners of liberal education, whose whole study has been devoted to the veterinary art in all its branches, may be gradually dispersed over the kingdom, on whose skill and experience confidence may be securely placed. For this purpose pupils are admitted at the College, who, in addition to the lectures and instructions of the Professor, and the practice of the stables under his superintendence, at present enjoy (from the liberal disposition of some of the most eminent characters of the faculty to support and protect this Establishment) the peculiar advantage of free admission to their medical and anatomical lectures. Of these pupils many are at this time established in various parts of the coun-

try, practising with great credit and advantage to themselves, and benefit to their respective neighbourhoods. In order, however, that no doubt may arise respecting the sufficient qualifications of pupils upon their leaving the College, they are strictly examined by the Medical Committee, from whom they receive a proper certificate, if they are found to have acquired a sufficient knowledge in the various branches of veterinary science, and are competent to practise with advantage to the public.

That subscribers to the establishment have the privilege of sending to the College their horses, &c. which have occasion for medical treatment of any kind, without farther expense than that of their daily food; and these, in general, form a sufficient number of patients for the practice of the Professor and his pupils.—The Professor, or assistant, prescribes for horses, &c. belonging to subscribers who find it inconvenient to spare them for admission into the Infirmary, or in cases that do not require it, provided that such medicines as are necessary to be furnished are compounded at the College.—Horses are likewise shod at the College forge at the ordinary prices.

That in a political point of view, this Institution is of great importance with respect to the army

(which must be sufficiently manifest to every person acquainted with the former state of the practice of farriery in the cavalry); and so fully was the utility of it estimated, that a Board of General Officers having been appointed to take the Institution into consideration, reported, that the loss of horses accruing to the cavalry was heretofore very heavy, owing to the total ignorance of those who, previous to the appointment of veterinary surgeons, had the medical care of them; and that this Establishment has afforded essential improvement to that part of the Military Service, and thereby ultimately must be, and has been the means of considerable saving to the public. This report His Majesty was graciously pleased to approve.

RULES AND REGULATIONS.

Every subscriber of the sum of twenty guineas is a member of the Society for life.

Every subscriber of two guineas annually, to be paid by a cheque drawn upon some banker, or mercantile house of fixed residence in London or Westminster, is a member of the Society for one year, and is equally entitled to all benefits of the Institution whilst he continues such.

None but horses, or animals the property of

subscribers, can be admitted into the Infirmary; and should any patient procure admittance contrary to this regulation, either by the misrepresentation of the servant bringing it, or the mistake of the servant of the College who receives it, and the owner, on application being made to him, shall neglect to entitle himself to the privileges of a subscriber, by sending a cheque for his annual subscription, there shall then be charged for medicines and attendance, over and above the daily charge for keep, in no case less than two guineas, and more if more shall really have been expended in the treatment of such patient.

A receipt is directed to be given to every groom bringing a horse on his admission, and upon it a note of the Regulations, in no case to be departed from, that the horse will not be delivered to the owner, or any person sent by him, till the amount of his keep up to the day of delivery be paid.

In cases thought desperate by the Professor, or requiring a time to cure, which in his opinion would incur cost of keep exceeding the value of the animal, he is directed immediately to notify such his opinion to the proprietor, who in that case may choose whether he will, at his own expense, have the animal treated according to known rules of practice, or whether he will give him up to the

College, paying the expenses up to the time of such giving up. The animal then becomes a subject of experiment and bolder practice, which if successful, and the animal be restored to health, will still leave the proprietor the option of reclaiming him, on paying at the usual rate for his keep from the time of his having given him up to that of his reclaiming him.

Every gentleman having subject of complaint, either on the medical or stable treatment of his horse, or misconduct in the forge, or of any servants of the College, is requested to communicate the same by letter, addressed either to the Chairman of the Stable Committee, or of the next General Meeting.

No servant of the College is allowed to receive vails, and it is earnestly requested that subscribers will abstain from offering any, as conviction of the receipt would subject the servant so offending to immediate dismissal.

*Note.*—Though the cure of the diseases incident to horses has always been the primary object of the Institution, it is nevertheless the wish of the Directors to extend its benefits to every description of animals of the brute creation; and the progress of their views, in this respect, has been retarded solely by the want of subjects for practice.

N. B. Subscriptions paid between the first day of January and the last day of June are calculated for a year from the twenty-fifth of March; and those between the first of July and the end of December, for a year from the twenty-ninth of September.

PRIVILEGES OF SUBSCRIBERS.

A subscriber has the privilege of having his horses admitted into the Infirmary, to be treated under all circumstances of disease at the price of three shillings per night only, including keep, medicines, or operations of whatever nature that may be necessary; likewise of bringing his horses to the College for the advice of the Professor *gratis*, in cases where he may prefer the treatment of them at home; and in cases of accidents, which render the subjects of them not capable of being removed, the Professor, or his assistant, will attend the horses of subscribers at their own stables, within London and Westminster, at the usual charges of private practitioners.

A subscriber, though resident in the country, has the privilege of having medicines prepared at the College at an expense so much lower than the ordinary prices of druggists, as will, upon a

arge stable establishment, soon save the amount of subscription, as may appear by the following

CATALOGUE OF PRICES.

| | s. | d. | |
|---|---|---|---|
| Purging balls.. | 0 | 6 | each. |
| Alterative ditto | 0 | 8 | |
| Vermifuge ditto | 0 | 6 | |
| Diuretic ditto | 0 | 6 | |
| Cordial ditto | 0 | 8 | |
| Astringent ditto | 0 | 9 | |
| Tonic balls | 0 | 7 | |
| Febrifuge ditto | 0 | 9 | |
| Blistering ointment | 0 | 6 | per oz. |
| Astringent powder for Thrushes | 0 | 8 | |
| Ditto for Grease | 0 | 8 | |
| Discutient Lotion | 0 | 9 | per qt. |

THE END.

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ERRATUM.

P. 19, line 11, *for* implicit *read* implied.

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